

Panaji, 5th April, 2012 (Chaitra 16, 1934)

SERIES II No. 1

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are three Extraordinary issues to the Official Gazette, Series II No. 52 dated 29-3-2012 as follows:-

- 1) *Extraordinary dated 31-3-2012 from pages 1409 to 1698 regarding Notification from Department of Panchayati Raj and Community Development (Directorate of Panachayat).*
- 2) *Extraordinary (No. 2) dated 2-4-2012 from pages 1699 to 1700 regarding Notification from Department of Elections (Goa State Election Commission) and Notification from Department of Finance (Revenue & Control Division).*
- 3) *Extraordinary (No. 3) dated 3-4-2012 from pages 1701 to 1702 regarding Notification from Goa Legislature Secretariat.*

GOVERNMENT OF GOA

Department of Education, Art & Culture

Directorate of Technical Education

Polytechnic Section

Order

No. 25/7/93-EDN/Col/DTE

Sanction of the Government is hereby conveyed for revival of one post of Lecturer in Electronics and Communication Engineering (Group A) with immediate effect in the revised pay scale of ₹ 15,600-39,100 with Academic Grade Pay of ₹ 5,400/- in Government Polytechnic, Bicholim.

This is issued in accordance with OM No. 8/1/2006-Fin(R & C) dated 08-08-2008 and concurrence of Finance (Rev. & Cont.) Department vide their U. O. No. 1446657-F dated 02-11-2011 and the approval of Finance Minister/Chief Minister.

By order and in the name of the Governor of Goa.

Vivek B. Kamat, Director & ex officio Additional Secretary (Technical Education).

Porvorim, 13th March, 2012.

Order

No. 25/4/82/2011/DTE

Read: Memorandum No. 25/4/82/2011/Part.I/4084 dated 20-09-2011.

On the recommendations of the Goa Public Service Commission conveyed vide their letter No. COM/1/5/34(8)/2007/115 dated 20th July, 2011 Government is pleased to appoint Shri Vaibhav Vithoba Velip on temporary basis to the post of Lecturer in Electronics & Communication Engineering (Group 'A' Gazetted) in the Government Polytechnic, Bicholim on an initial basic pay of ₹ 15,600/- and other allowances as admissible in the Pay Band of ₹ 15,600-39,100 plus Academic Grade Pay of ₹. 5,400/- with effect from the date of joining the post as per the terms and conditions contained in the memorandum cited above.

Shri Vaibhav Vithoba Velip will be on probation for a period of two years.

He should join duties within 30 days of the receipt of this order, failing which this order is liable to be cancelled without further notice.

He has been declared fit by Medical Board, Goa Medical College & Hospital Bambolim vide letter No. 4/106/84-H/GMC/619 dated 12-03-2012. The appointment is further subject to verification of character and antecedents.

By order and in the name of the Governor of Goa.

Vivek B. Kamat, Director & ex officio Additional Secretary (Technical Education).

Porvorim, 28th March, 2012.

Department of General Administration

Notification

No. 1/11/2012-GAD-II

Read: Notification No. 1/11/2012-GAD-II dated 21-03-2012.

In partial modification of the Notification read above, the National Flag will be flown at Half Mast in the buildings where it is flown regularly in Panaji, during the mourning period from 21-03-2012 to 23-03-2012.

By order and in the name of the Governor of Goa.

Ajit Pawaskar, Under Secretary (GA-II).

Porvorim, 22nd March, 2012.

Department of Labour

Notification

No. 28/1/2012-LAB/148

The following award passed by the Lok Adalat, at Panaji-Goa on 10-03-2012 in reference No. IT/119/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 22nd March, 2012.

COMPROMISE MEMORANDUM IN REFERENCE
INSTITUTED UNDER SECTION 10(1)(d) OF
INDUSTRIAL DISPUTE ACT, 1947

BEFORE LOK-ADALAT

Reference No. IT/119/99

Mr. Anil Bhomkar Workman/ Party I
V/s

M/s. Singer India Ltd. Employer/ Party II

The Government of Goa has made the reference under Section 10 (1) (d) of the Industrial Disputes Act, 1947. The Party I by filing the claim statement has prayed for reinstatement with full their back

wages, Management refused the said claim by filing therein written statement. However the parties came to amicable settlement by settling the present matter in full & final settlement by paying sum of ₹ 35,000/- (Thirty five thousand only) by Demand Draft with includes all his (Workman) claim, the Workman agreed that his claim is conclusively settled.

We the above mentioned parties have amicably settled the dispute under reference as per the terms of settlement. Hence the reference may be decided in terms of settlement.

Dated: 10-03-2012.

Anil Bhomkar

Identified by Sd/-

Name & Signature
of the Applicant

Name & Signature
of the Opponent/s
(Mr. Laxman
Shetgaonkar)
Shop Manager

Identified by Sd/-
10-03-2012

Award

The parties and their Advocates are present. The parties have filed terms of settlement which have taken on record. (Exb.). The parties have amicably settled the dispute. Hence the Order:

Order

- 1) The reference disposed off in terms of settlement. (Exb.).
- 2) No order as to cost.
- 3) The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Dated: 10-3-2012

Place: Panaji (Signature of the Presiding
Officer of Lok-Adalat Panel).

(Signature of the Member
of Lok-Adalat Panel).

(Signature of the Member
of Lok-Adalat Panel).

Notification

No. 28/1/2012-LAB/126

The following award passed by the Industrial Tribunal and Labour Court-I, at Panaji-Goa on

10-02-2012 in reference No. IT/17/2008 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 15th March, 2012.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA AT PANAJI

(Before Smt. Bimba K. Thaly, Presiding Officer)

Ref. No. IT/17/2008

Shri Sameer L. Naik and 20 others
Rep. by Kadamba Kamgar Union,
T-1, Sindur Bldg., Opp. Passport office,
Panaji-Goa. ... Workmen/Party I
V/s

M/s. Kadamba Transport Corporation Ltd.,
East Wing, Bus Terminus,
Praise de Goa,
Alto, Porvorim, Goa. ... Employer/Party II

Adv. Shri A. Kundaikar for Workmen/Party I.

Adv. Shri A. Palekar for Employer/Party II.

AWARD

(Passed on 10th day of February, 2012)

By order dated 24-4-08, the Government of Goa in exercise of powers conferred by Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short the Act), has referred the following dispute to this Tribunal for adjudication.

- "(1) Whether the following twenty one persons engaged by M/s. Kadamba Transport Corporation Limited, Porvorim, vide order No. 1-2-2002-2003/KTC/PERS/3191 dated 18-1-2003, for the period from 20-1-2003 to 19-1-2004, can be construed as "Workmen" as per clause (S) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?
- (2) If the answer to issue No. (1) is in the affirmative, then, whether the action of M/s. Kadamba Transport Corporation Limited, in terminating the services of said 21 Workmen, with effect from 20-1-2005 is legal and justified?
- (3) If the answer to issue No. (2) above is in the negative, then, to what relief the said twenty one Workmen are entitled?"

Sr. No. Names of the Workmen

1. Shri Sameer Laxman Naik.
2. Shri Narendra Shetgaonkar.
3. Shri Pandurang Temkar.
4. Shri Darshan Govekar.
5. Shri Adarsh Naik.
6. Shri Prasad Dhargalkar.
7. Shri Rupes Naik.
8. Shri Akbar Saab.
9. Shri Nitesh Jog.
10. Shri Deepak Kambli.
11. Shri Dinesh Dessai.
12. Shri Vishal Chodankar.
13. Shri Joseph Fernandes.
14. Shri Shailendra Naik, Panaji Depot.
15. Shri Sagar Pawaskar.
16. Shri Damodar Naik.
17. Shri Nilesh Chodankar.
18. Shri Sarvesh Shetye.
19. Shri Santosh Parab.
20. Shri Vassudev Tirodkar.
21. Shri Pandurang Phadte.

2. The reference was registered under No. IT/17/08 and notices were issued to both the parties. In pursuance, the parties put in their appearance. The Workmen/Party I filed statement of claim at Exb. 3. The Employer/Party II filed a written statement at Exb. 8. The rejoinder of Party I is at Exb. 9.

3. It is the contention of Party I that they are the members of Kadamba Kamgar Union who is espousing the cause of Workmen in respect of the termination of the services of 21 Workmen with effect from 20-1-05. That the Workmen were appointed in Party II as apprentices in the trade of Diesel Mechanic from 20-1-03 to 19-1-04 by order dated 18-1-03. That their services were further extended for a period of one year upto 19-1-05 by order dated 31-1-04 and that they were in continuous services for more than 240 days from the date of the appointment till the discharge of the services. It is their further case that though they were appointed as apprentices, the same was not registered under the Apprenticeship Act and that no trainer or examiner was appointed nor was examination given to the apprentices. It is also stated that on completion of the period of training no certificate was issued to the apprentices as required under the law. It is further stated that the provision of Apprenticeship Act cannot be made applicable to them as they were not undergoing training pursuant to appointment as apprentices and on the contrary, the Workmen discharged the duties independently

without any supervision or trainer or any examiner. That the Workmen were discharging the duties alongwith the permanent Workmen and the Workmen were also called in shifts and discharged the duties in three shifts as per the exigencies of the shifts. It is also stated that some of the Workmen were also posted as diesel attendant at the depots and therefore they cannot be termed as Workmen under the Act. It is further stated that the Workmen were doing manual, unskilled, skilled, technical and clerical duties from the date of appointment till they were discharged arbitrarily. It is also the case of Party I that on account of non-compliance of the provisions of Section 25 of the Act, the termination or the discharge of the Workmen is illegal.

4. It is further the case of Party I that on completion of the period as mentioned in the order the Workmen approached the Party II for certificate of Workmen as provided under the Apprentices Act in order to secure the alternate employment in better field. However, they were assured that their services shall be retained on account of satisfactory performance and independent discharge of duties without any trainer or examiner. Thus according to the Party I, the action of Party II in terminating the services of Workmen is illegal and victimization and that the action of Party II smacks malafide and is ex-facie instance of unfair labour practice. Thus, the Workmen have prayed to pass an award holding that the twenty-one persons engaged by Party II vide order dated 18-1-03 for the period from 20-1-03 to 19-1-04 be construed as Workmen under Section 2(s) of Act and to hold that the termination of their services from 20-1-05 is illegal.

5. In the written statement it is the case of Party II that Party I are not 'Workmen' under Section 2(s) of the Act; that the present dispute is not an "Industrial Dispute" under Section 2(k) of the Act; that the Party I are not the members of Kadamba Kamgar Union and the said Union is not entitled to espouse the cause of Party I and therefore the reference is not maintainable. Party II has otherwise denied the entire case set up by Party I in the claim statement.

6. Based on the aforesaid pleadings, the following issues were framed.

1. Whether the Party I proves that the persons named in the reference are the Workmen "within the meaning of Section 2(s) of the Industrial Dispute Act"?
- 2 Whether the Party I proves that the termination of their services is in

contravention of Section 25(F) of the Industrial Dispute Act.

3. Whether the Party I proves whether termination of their services is illegal, malafide and amounts to unfair labour practices?

4. What relief?

7. Party I has examined Shri Joseph Francis Fernandes as witness No. 1, Shri Deepak Kambli as witness No. 2 and Shri Avilash Rawal as witness No. 3. on the other hand Party II has examined Shri Vidyadhar Harmalkar as witness 1 and closed the case.

8. Lnd. Adv. Shri A. Kundaikar argued for Party I and he also filed written submissions at Exb. 33. Ld. Adv. Shri M. Kinnelkar for Party II filed written submissions at Exb. 32.

9. I have gone through the records of the case and have duly considered the arguments of both the Lnd. advocates. My findings on the issues are as under:

Issue No. 1: In the affirmative.

Issue No. 2: In the affirmative.

Issue No. 3: Partly in the affirmative.

REASONS

10. All the above issues are answered together for the sake convenience as they are interconnected, to avoid repetition of facts.

11. Shri Joseph Francis Fernandes (one of the persons from amongst Party I/Workmen) has stated that the Workmen were appointed in M/s. Kadamba Transport Corporation as Apprentices in the trade of Diesel Mechanic from 20-1-03 to 19-1-04 by order dated 18-1-03. He has produced the said order at Exb. 21. He has also stated that the services of Workmen in trade of Diesel Mechanic were further extended for a period of 1 year up to 19-1-05 by order dated 31-1-04. He has stated that the Workmen were in continuous services for more than 240 days from the date of appointment i.e. from 18-1-03 till 20-1-05 i.e. till the discharge of the services. He has stated that he alongwith other Workmen was discharging the duties alongwith permanent Workmen; that the Workmen were also called in shifts and discharged the duties in three shifts as per the exigencies of work; that some of the Workmen were posted as diesel attendant at the depots and that the Workmen were doing manual, unskilled, skilled, technical and clerical

duties from the date of appointment till they were discharge arbitrarily. He has stated that though the Workmen were appointed as apprentices, the same was not registered under the Apprenticeship Act as required under the Act; that no trainer or examiner was appointed nor was any examination given to the apprentices so also upon completion of training period the certificates were not issued to the apprentices as required under the law. In his cross-examination he has made it clear that though they were appointed as apprentices they were given independent work without any instructor or examiner. He has however stated that subsequent to the order dated 18-1-03 (Exb. 12) another order was issued to all of them giving further extension of one year without break in service and this order also showed their designation as apprentices. He has denied the suggestion that they were appointed purely as apprentice and were being trained. He has also denied the suggestion that they were not in continuous service for more than 240 days and they were taken only as trainees. He has denied the suggestion that they had worked under a trainer/examiner and their work was assessed by trainer and examiner. He has denied the suggestion that certificates were issued to the Workmen on completion of training period. He has denied the suggestion that they were governed by the provisions of the Apprenticeship Act.

12. The deposition of second witness Deepak Kambli (also a person from amongst Party I) is on the same lines as that of Joseph Francis Fernandes and though in his cross examination he has admitted that in the order they were appointed on apprentice basis and that even in the second order of extension there was reference of apprenticeship, he has denied the suggestions that he is not coming under the definition of 'Workmen' and that the training given to him cannot be termed as service of employment. He has further stated that they orally asked about non-providing of trainer or examiner but there was no written document to that effect.

13. The third witness Shri Avilash Rawal has also deposed in his chief examination on the same lines as that of aforesaid witness No. 1 and 2 but in his cross examination he has denied the suggestion that as the said workers were appointed as apprentices under the Apprenticeship Act and were trained accordingly, no any objections were raised by the Union with the employer regarding non applicability of the Apprenticeship Act or that the training was given without supervision/trainer/examiner.

14. Shri Vidyadhar Harmalkar the witness of Party II has stated that the 21 persons named in the claim statement are not Workmen and the dispute is not maintainable. He has also stated that the Workmen were apprentice and they have not been in continuous service for more than 240 days as per law to qualify to raise the dispute. According to him, Party I/Workmen were imparted training under Apprenticeship Act and they were not discharging independent duties of whatsoever nature. He has also stated that the Apprenticeship period has been extended and there has not been any continuity in service and Party I cannot take advantage of the same. In his cross examination he has stated that the candidates whose names figured in the order dated 18-1-03 at Exb. 12 were posted at Margao, Panaji, Porvorim and Vasco as per the requirement of work. He has stated that the apprenticeship contract was submitted to the State Apprenticeship Advisor on 8-11-04 after it was renewed. He has also stated that he does not know whether the said contract was registered. According to him no trade test was conducted before posting these apprentices in different depots; that no trainer was deputed to these depots and that the contract stood terminated after two years due to afflux of time. He has also stated that he is not aware whether annual returns in respect of apprentices were forwarded to the State Apprenticeship Advisor. He has stated that he has not gone through the contract of the Apprentices before filing the affidavit. He has stated that apprentices are entitled for certificates on completion of training period and that the apprentices in the present reference were not issued certificates by the Corporation. He also made it clear that the contract of apprenticeship was not executed at the time of initial appointment.

15. It may be mentioned here that the initial burden to prove that the Party I are the "Workmen" under Section 2(s) of The Act is on the Party I and this is because the Party I would get the relief claimed only if they succeed in proving that they are the 'Workmen' u/s 2(s) of The Act.

16. The statements made by witness No. 1/Shri Joseph and witness No. 2/Deepak that they alongwith other Workmen were discharging the duties alongwith permanent Workmen; that the Workmen were also called in shifts and they discharged duties in three shifts as per the exigency of work and that some Workmen were doing manual, unskilled, skilled, technical and clerical duties since the date of appointment till

they were discharged, are not denied in their cross examinations and on the contrary it is brought on record in the cross examination of Shri Vidyadhar Harmalkar (witness for Party II) that the persons whose names figure in the order dated 18-1-2003 at Exb. 12 were posted at Margao, Panaji, Porvorim and Vasco as per the requirement of the work. He has also stated that though they were appointed as apprentices they were given independent work without any instructor or examiner. He has stated that there is punching system in the Corporation and it is applicable to the persons working as apprentices. According to him, the apprentices were required to attend working hours in general shifts and apart from this they had to work in other shifts. He has also given the timings of the shifts which are that general shift from 9.30 to 5.30, Shift B from 5.00 p.m. to 12.00 a.m. and third shift from 12.00 a.m. to 8.00 a.m., 5.00 to 12.00 a.m. and 12.00 a.m. to 8.00 a.m. which is considered as night shifts.

17. It is therefore clear from above evidence that Party I/Workmen were required to work independently in the above shifts and since the nature of work which Party I/Workmen were doing which is so stated by witness No. 1 and witness No. 2 above is not denied, it becomes clear that Party I/Workmen have succeeded in proving that they were not working under any trainer and that the nature of their work was manual, unskilled, skilled, technical and clerical.

18. Be that as it may, from the admissions brought on record in the cross examination of Shri Vidyadhar Harmalkar viz-a-viz the provisions of the Apprenticeship Act it becomes clear that though Party II claims that the appointment of Party I/Workmen were as apprentices, the required procedure under the Apprenticeship Act was not followed while appointing them as such. No doubt, in terms of order dated 18-1-03 as well as the extension order dated 31-1-2004 (Exb. 21), the Party I/Workmen were engaged as apprentices and were paid stipend per month but merely because the order of their engagement says so it would not be proper and justified to construe that Party I/Workmen were engaged as apprentices and this is because for engaging them as apprentices it was required of Party II to have complied with the provisions of the Apprenticeship Act, 1961.

19. Lnd. Adv. for Party I invited my attention to the definition of the term "apprentice" under Section 2(aa) of the Apprentices Act, 1961 which reads as under:

"Apprentice" means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

20. From the above definition, it becomes clear that for undergoing apprenticeship training there has to be a contract of an apprenticeship. Perusal of cross examination of Shri Vidyadhar Harmalkar reveals that the contract of apprenticeship was a written contract and that it was submitted to the State Apprenticeship Advisor on 8-11-2004. He has however admitted that the same was submitted to the State Apprenticeship Advisor after renewal of the contract. He has stated that he does not know the terms and conditions stipulated in the contract so also the date on which the contract was registered or whether it was at all registered. Lastly he has made it clear that in the present case the contract of apprenticeship was not executed at the time of initial appointment. Thus from the nature of above statements brought on record in the cross examination of Shri Harmalkar, it becomes clear that at the time of initial appointment of Party I/Workmen vide Exb. 12 no contract of apprenticeship was entered into and therefore it follows that the appointment of Party I/Workmen vide Exb. 12, cannot be called as "apprentices". This is more because Section 4 of the Apprentices Act, 1961 also speaks about entering into Contract of Apprenticeship. The relevant clauses of said Section 4 read as under:

Contract of Apprenticeship:

- (1) *No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person has entered into contract of apprenticeship with the employer.*
- (2) *The apprenticeship training shall be deemed to have commenced on the date, which the contract of apprenticeship have been entered into under sub-section (1).*
- (3) *Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract. Provided.....*
- (4) *Every contract of apprenticeship entered into sub-section 1 shall be sent by the employer within such period as may be prescribed to the Apprenticeship Advisor for registration.*
- (5) *The Apprenticeship Advisor shall not register a contract of apprenticeship unless he is satisfied that the person described as an apprentice in the contract is qualified under this Act for being engaged as an apprentice to undergo apprenticeship training in the designated trade specified in the contract.*
- (6) *.....*

21. Since it is clear that at the time of initial appointment of Party I/Workmen vide Exb. 12 no contract of apprenticeship was executed, it obviously follows that the above requirements of Section 4 of Apprentices Act were not complied with. Undoubtedly, in his cross examination Shri Harmalkar has made it clear that he does not know whether the said contract was registered or not, though he has produced at Exb. 20 colly a letter dated 20-5-2003, addressed to the State Apprenticeship Advisor by the Personnel Officer of Party II informing that Party II has engaged 32 apprentices and that the contract forms duly filled in and completed in all respect were being forwarded to the State Apprenticeship Advisor. He has also produced at Exb. 24 a copy of letter dated 8-11-2004 addressed to the State Apprenticeship Advisor, in continuation with the letter at Exb. 20 colly mentioning about forwarding about the contract forms in triplicate duly completed in respect of 38 apprentices engaged by Party II for registration of contract. It may be mentioned here that neither in the written statement nor in the affidavit in evidence of Shri Harmalkar there has been any reference found to the letter dated 20-5-2003, produced at Exb. 20 colly and therefore it is not understood as to in what context Exb. 20 colly has been produced on record by Shri Harmalkar. This is because as pointed out by me above Shri Harmalkar has made it clear that he does not know whether the contract was registered or not. This being the case, it is clear that Party II has not complied with the provisions of Section 4(4) of the Apprentices Act, 1961 to bring its case within the ambit of the Apprentices Act, 1961.

22. U/s 7 of the Apprentices Act, 1961 the contract of apprenticeship terminates on the expiry of the period of apprenticeship training. This section also contemplates that either party to a contract of apprenticeship may make an application to the Apprenticeship Advisor for the termination of the contract by sending a copy of the same to the other party to the contract. Shri Harmalkar has stated that the contract in this case stood terminated after efflux of time and that no separate agreement was entered into for termination of the contract. Thus, this indicates non-compliance of Section 7 of the Apprenticeship Act, 1961.

23. Under Section 9 of the Apprentices Act, 1961, the apprentices are required to be given practical and basic training and every employer has to

make suitable arrangement in his workshop for imparting a course of practical training to every apprentice engaged by him in accordance with the programme approved by the Apprenticeship Advisor. However, as pointed out by me above, witness No. 1/Shri Joseph Francis Fernandes has stated that though they were appointed as apprentice, they were given independent work without any instructor or examiner. He has denied the suggestion that they had worked under a trainer/examiner and their work was assessed by trainer and examiner. Nevertheless, it can be made out from the statements made by Shri Harmalkar in his cross examination that the apprentices were posted in different depots but no trainers were deputed to these depots and this statement by itself contradicts the case suggested by Party II, to Shri Joseph. It is therefore clear that as required u/s 9 of the Apprentices Act no course of practical training was imparted to every apprentice under the guidance of the trainer. Thus, even on this count there is no compliance of the provisions of Apprentices Act, 1961.

24. U/s 19 of the Apprentices Act every employer is bound to maintain records of the progress of the training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed and he shall also furnish such information and returns in such form, to such authorities at such intervals as may be prescribed. In his cross examination Shri Harmalkar has stated that he is not aware whether annual returns in respect of the apprentices were forwarded to the State Apprenticeship Advisor. If Party I/Workmen were engaged as apprentices it was the duty of Party II to have complied with the above requirements under the Apprentices Act, 1961 and to have produced the copies of annual returns as required to be filed u/s 19 of the Apprentices Act, 1961. In the absence of production of such documentary evidence, it can be safely concluded that there is no compliance of above requirement of the Apprentices Act, 1961.

25. Under Section 21 of the Apprentices Act, 1961 upon completion of training period by the apprentice he is required to appear for the test to be conducted to determine his proficiency in the designated trade in which he has undergone apprenticeship training and every apprentice who passes this test is granted a certificate of proficiency in trade. It is suggested to witness No. 1 Shri Joseph that certificates were issued to the Workmen on completion of the training period. However, in his cross examination Shri Harmalkar

has made it clear that trade test was not conducted before posting these apprentices in different depots and he has also admitted that the apprentices in this reference were not issued certificates by the Corporation. It is therefore clear that the mandatory requirement of Section 21 was not complied with and thus even for this reason I am declined to hold that the engagement of Party I/Workmen was under Apprentices Act, 1961.

26. It is therefore clear from above, that the requirements of the Apprentices Act, 1961 were not fulfilled by Party II for saying that the Party I/Workmen were engaged as apprentices under the Apprentices Act, 1961.

27. Lnd. Adv. for Party I relied on the judgment in **State of Gujarat and Anr v/s. Chauhan Ramjibhai Karsanbhai 2004 LAB I.C. 1453** in which the order of the Labour Court Bhavnagar in reference No. 469/1990, of setting aside the termination order and granting reinstatement of draftsmen with continuity of service and full back wages with consequential benefits was challenged and it was held that since the agreement executed between the parties under the Apprentices Act, 1961 was not registered as required under the Apprentices Act, 1961, no training was given to the Workmen and consequently no examination was given by the Workmen and no certificate was issued. It is also held in this judgment that though the initial appointment may be under Apprentices Act, 1961 but as certain provisions of Apprentices Act were not followed by the management the Workmen were entitled for the benefits u/s 25F of the I. D. Act. This judgment further indicates that in Section 2(s) of the I. D. Act, the apprentices are also included in the definition of the Workmen. The observations in this judgment squarely apply to the case at hand and therefore I have no hesitation to hold that Party I are the 'Workmen' under Section 2(s) of the Act and they should get the benefit under Section 25F of the I. D. Act.

28. He also relied on the judgment in **Uttar Pradesh State Electricity Board and Anr v/s. Presiding Officer, Labour Court, Kanpur 2003 (3) L.L.N. 922** in which it is observed that if the plea of appointment as apprentice was not supported by any evidence and if the procedure for such appointment under Apprenticeship Act is not complied with it has to be held that the employer has failed to prove that the concerned Workman was an apprentice.

29. He then relied on the judgment in **Textile Traders Co-op. Bank Ltd. v/s Jagdishbhai Natwarlal Patel 2000 (3) L.L.N. 766** in which by

considering the judgment in **Rajasthan Public Road Transport Corporation v/s Jagdish Vyas and ors 1994 L & I.C. 1925** has observed that when the person appointed as apprentice for one year was allowed to continue in employment for 3 years and four months without any specific order extending the apprenticeship or otherwise such employees have to be considered as a Workman against the vacant post. By referring to the above observations, Lnd. Adv. for Party I submitted that in the instant case on account of non compliance of the provisions of the Apprenticeship Act, 1961 it has to be construed that Party I were the "Workmen" since beginning unlike the above case in which the initial appointment was made as apprentice. Further, by inviting my attention to the cross examination of Shri Harmalkar he stated that there is admission that the candidates whose names figured in the order at Exb. 12 were posted at Margao, Panaji, Porvorim and Vasco as per the requirement of work which in other words means that they were posted as against the existing vacancies and thus according to him the Party I are the Workmen under Section 2(s) of the Act.

30. In the written arguments, Party II has contended that in terms of Section 18 of the Apprentices Act, the person appointed as apprentice shall be a trainee and not a worker and that provisions of Labour Law do not apply to or in relation to such apprentice. He also stated that witness No. 1 for Party I has accepted that they were appointed as apprentices and the order granting further extension of one year also showed their designation as apprentices. Thus, according to him Party I cannot be termed as "Workmen" within the meaning of Section 2(s) of the Act.

31. It is pertinent to note that since while engaging Party I/Workmen as apprentices, Party II has not complied with the mandatory requirements of the Apprentices Act, 1961 it would not be proper and justified to hold that Party I/Workmen could be designated as apprentices, merely because the letter of appointment as well as the order granting further extension show the designation of Party I/Workmen as 'apprentices'.

32. It is also the contention of Party II that the present dispute is not an "Industrial Dispute" within the meaning of Section 2(k) of The Act and is not maintainable and deserves to be dismissed. It is also the contention of Party II that Party I/Workmen are not the members of the Kadamba Kamgar Union and that the said Union is not entitled to espouse the cause of Party I/Workmen.

It may be mentioned here that the reference sent to this Court by the appropriate Government is restricted to decide whether Party I can be construed as 'Workmen' and if so the action of Party II in terminating their services is legal and justified and if not to what relief they are entitled to. This being the case, this court cannot travel beyond the terms of the reference to find out if the present dispute is an "Industrial Dispute" or not within the meaning of Section 2(k) of The Act and if Party I are not the members of the Kadamba Kamgar Union so also if the said Union is not entitled to espouse the cause of Party I.

33. Nevertheless, in his chief examination Shri Joseph Francis Fernandes has stated that the Party I/Workmen were the members of Kadamba Kamgar Union who has resolved to take the issue of termination of services of Workmen and has authorized the President of the Union to sign, appear and depose on behalf of the Union before this court. In his cross examination he has stated that they had made an application to the Union to enroll the members of the Union; that he has the copy of the said application which he can produce. He has also stated that they had informed the management that they had joined Kadamba Kamgar Union; that he has the copy of the said letter, which he can produce. He has also stated that he can produce the copy of the resolution passed by the Union to enroll them in the Union.

34. Shri Deepak Kambli has in his chief examination reiterated the statements made by Joseph Francis Fernandes in his examination in chief, on the above, subject and in his cross examination he has stated that the General Secretary raised the dispute before the Conciliation Officer regarding termination of 21 workers. He has also stated that he does not know if the said General Secretary has any authority to raise such dispute and has denied the suggestion that neither he nor any person representing Kadamba Kamgar Union has any authority to raise such dispute.

35. Shri Avilash Rawal has stated that he is the President of Kadamba Kamgar Union and has filed and verified the claim statement on behalf of Party I/Workmen who are the members of Kadamba Kamgar Union. He has further stated that the Union has resolved to take the issue of termination of services of Workmen and has authorized him to sign, appear and depose on behalf of the Union before the Court. In his cross examination he has stated that he was having a document to show that he has raised a dispute as President of Union with the Labour Commissioner and that he will be able

to produce a document on the next date. He has denied the suggestion that he has not signed any document as the President of the Union with regard to the present dispute, He has denied the suggestion that 21 Workmen mentioned in this reference were not the members of Kadamba Kamgar Union and that he has no authority to raise and espouse any dispute on behalf of said 21 workers before the Labour Commissioner or before this Tribunal.

36. It is pertinent to note that though witness No. 1 Joseph had stated that he was having the copy of the application to enroll Party I as a member of the Union so also the copy of the letter vide which they had informed the management that they had joined Kadamba Kamgar Union and also the copy of resolution passed by Union to enroll them in the Union and he can produce the same, no request was made by Party II to the Court to direct said Shri Joseph to produce those copies. This being the case no adverse inference could be drawn against Shri Joseph to say that he has not produced those copies because the same were not existing. Things would be different if said Shri Joseph could not produce the aforesaid copies of the application/letters despite directions to produce the same. It may be mentioned here that said Shri Joseph has produced at Exb. 14 a receipt dated 20-4-2003, which indicates that he had paid a sum of ₹ 150/- towards membership of Kadamba Kamgar Union and this receipt bears the stamp of above Union. Interestingly, in his cross examination Exb. 14 is not challenged or disputed. Thus, it is clear that said Shri Joseph is the member of Kadamba Kamgar Union and hence I have no hesitation to hold that even the other 20 persons with him are the members of Kadamba Kamgar Union, which is so stated by witness No. 3 Shri Avilash Rawal.

37. It may be mentioned here that the evidence of Shri Avilash Rawal corroborates with evidence No. 1 Shri Joseph as both have stated that Kadamba Kamgar Union had resolved to take the issue of termination of Workmen and had authorized the President (i.e. witness No. 3 Shri Rawal) for the said purpose. No doubt, witness No. 2 Shri Deepak Kambli has stated that it is the General Secretary who raised the dispute before the conciliation officer regarding termination of services of 21 workers but this by itself cannot be construed to mean that the Union was not authorized to espouse the cause of Party I/Workmen. That apart, though in his cross examination Shri Rawal made it clear that he was having a document to show that he raised a dispute as the President of the Union, with

Labour Commissioner and he will be able to produce the same on the next date, no directions were given to this witness to produce the document on the next date. Thus, in the absence of such directions no adverse inference could be drawn against this witness to say that he did not raise the dispute as the President, with the Labour Commissioner. The other inference which could be drawn from the statement of Shri Rawal is that it was the President and not the General Secretary who raised the dispute before the Labour Commissioner.

38. As regards the contention of the Party II that the present dispute is not an Industrial Dispute within the meaning of Section 2 (k) of the Act and hence is not maintainable, I would refer to the judgment in **Maharashtra General Kamgar Union v/s State of Maharashtra and others 1995 (3) Bom. C. R. 53** in which Hon'ble Bombay High Court has held that "Section 2-A in terms was intended to get over the difficulty and hardship to the Workmen caused by the rigid satisfaction of law resulting from the consistent interpretation of Section 2(k) of the Act defining the expression "industrial dispute". Consistent with this intention, Parliament provided a narrow exception to the General definition of "industrial dispute" in Section 2(k) of the Act. With regard to discharge, dismissal, retrenchment or termination of service, Section 2-A by a fiction of law, provides that such a dispute shall be deemed to be an industrial dispute, notwithstanding that no other Workmen nor any Union of Workmen is a party to the said dispute. As a result of the legal fiction introduced by Section 2-A any dispute raised by or on behalf of an individual Workman amount to an individual dispute only if it pertains to his discharge, dismissal, retrenchment or otherwise removal from service, even if it is not espoused by other Workman employed in the industrial establishment, collectively or to a trade Union." Thus, it is clear that the present reference cannot be considered as not maintainable, on the above count.

39. Having come to the conclusion that Party I is a Workman under Section 2(s) of the Act as rightly stated by the Ld. Adv. for Party I it was for Party II to have complied with the mandatory requirement of Section 25(F) of the Act before terminating their services. It is clear on the basis of the document at Exb. 12 and Exb. 21 that Party I/Workmen were in services from 18-1-03 till 20-1-05 and therefore they were in continuous services with Party II for a period of 240 days and being so it was incumbent upon Party II to comply with the provisions of

Section 25 (F) and non compliance of the same renders the retrenchment of Party I/Workmen, illegal.

40. It is also the contention of Party I that the termination of their services is illegal, malafide and amounts to unfair labour practices. No doubt, discussion supra indicates that the termination of Party I is illegal and malafide but Party I has not proved that same amounts to unfair labour practices by adducing evidence to the effect that Party II has followed any of the practices specified in the fifth Schedule. Thus Party I has partly proved the above contention.

41. It is the claim of Party I/Workmen that they be reinstated in services with full back wages and consequential benefits attached to the post. Shri Joseph Francis Fernandes has stated that he is unemployed since the date of termination of his services till date and is not in a position to maintain the sustenance of living. Even Shri Deepak Kambli has made the same statement as above. No contrary evidence to indicate that Party I/Workmen were gainfully employed during the aforesaid period is on record. It may be mentioned here that though Shri Joseph and Shri Deepak have stated that they are unemployed and are not in a position to maintain the sustenance of living, there is no positive statement by both of them that they do not have any income since the date of the termination. Ld. Advocate for Party I relied on the judgment in **J. K. Synthetics Ltd., K. P. Agarwal another 2007 STPL (LE) 37788 SC** and in **Mohan Lal v/s Management of M/s. Bharat Electronics Ltd., 1981 STPL (LE) 10649 SC** contending that when the question of determining the entitlement of a person to backwages is concerned, the employee has to show that he was not gainfully employed; that the initial burden is on him and after he places materials in that regard, the employer has to bring on record material to rebut the claim so also that when the precondition for a valid retrenchment has not been satisfied the Workman is entitled to all benefits including back wages etc. There is no dispute about the above proposition of law. However I would rely on the judgment in **In-charge officer and another v/s Shankar Shetty 2010 (9) SCC 126** and **Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal others AIR 2010 SC 2140** in which the Apex Court has observed as under:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal positions that if the termination of an Employee was found to be illegal, the relief of

reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an Employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice".

42. It is pertinent to note that though the relief of reinstatement with back wages and all the benefits is claimed by Party I, no evidence is adduced to indicate that presently there are existing vacancies in Party II, to order reinstatement of Party I/Workmen as against those vacancies. Even for that matter, as observed in the judgment in J. K. Synthetics Ltd. (Supra) Party I has not placed any material on record, to show that they are not gainfully employed and have merely made the statements that they are unemployed since the date of termination. Thus, in the fact situation pointed out above, wherein no evidence is adduced on the subject of existence of vacancies in Party II for reinstatement of Party I/Workmen, I am of the considered opinion that compensation instead of reinstatement of the Party I/Workmen, would meet the ends of justice.

43. There is otherwise no dispute that Party I/Workmen were paid consolidated payment of ₹ 940/- initially and thereafter ₹ 1,090/- per month at the time of retrenchment. Shri Joseph Francis Fernandes has produced payment slips for February, 2003 and September, 2005 at Exb. 15. It is equally correct that in terms of order at Exb. 12 the above payment is termed as "stipend". Nevertheless, since discussion supra makes it clear that Party I are the 'Workmen' under Section 2(s) of the Act, the nomenclature 'stipend' loses its significance. Thus, considering that no case has been made out by Party I for directing their reinstatement, in my view each of the Workmen has to be paid an amount of ₹ 60,000/- towards the compensation which amount in my opinion shall be appropriate, just and equitable, in the fact situation of this case.

Under the circumstances, and in view of discussion supra, I pass the following order.

ORDER

1. The action of M/s. Kadamba Transport Corporation Limited, Porvorim, in terminat-

ing the services of Party I/Workmen with effect from 20-1-2005 is held to be illegal and unjustified.

2. The Party II is directed to pay each of the Party I/Workmen namely Shri Sameer Laxman Naik, Shri Narendra Shetgaonkar, Shri Pandurang Temkar, Shri Darshan Govekar, Shri Adarsh Naik, Shri Prasad Dhargalkar, Shri Rupesh Naik, Shri Akbar Saab, Shri Nitesh Jog, Shri Deepak Kambli, Shri Dinesh Dessai, Shri Vishal Chodankar, Shri Joseph Fernandes, Shri Shailendra Naik, Panaji Depot, Shri Sagar Pawaskar, Shri Damodar Naik, Shri Nilesh Chodankar, Shri Sarvesh Shetye, Shri Santosh Parab, Shri Vassudev Tirodkar and Shri Pandurang Phadte monetary compensation of ₹ 60,000/- (Rupees sixty thousand only) within two months from the date of publication of the Award failing which the same shall carry interest at the rate of 9% p.a.

3. Inform the Government, accordingly.

Sd/-
(B. K. Thaly),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

Notification

No. 28/1/2012-LAB/127

The following award passed by the Industrial Tribunal and Labour Court-I at Panaji-Goa on 02-02-2012 in reference No. IT/16/06 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).
Porvorim, 15th March, 2012.

IN THE LABOUR COURT-II GOVERNMENT OF GOA AT PANAJI-GOA

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/16/06

Shri Raghuvir Parsekar,
Menezes wado, Bastora,
Bardez-Goa.

... Workman/Party I

V/s

Comunidade de Mapusa,
Near St. Jerome's Church,
Mapusa-Goa.

... Employer/Party II

Party I/Workman represented by Adv. P. J. Kamat.

Party II/Employer represented by Adv. B. D. Nazareth.

Panaji, dated: 02-02-2012.

AWARD

1. In exercise of the powers conferred by Section 10 (1) (d) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 27-02-2005, bearing No. 28/36/2005-LAB/131 referred the following dispute for adjudication to the Industrial Tribunal of Goa.

“(1) Whether the action of the Comunidade de Mapusa, Mapusa, Bardez-Goa in refusing the employment to their Workman, Shri Raghuvir S. Parsekar, Peon, w.e.f. 01-09-2004 is legal and justified?

(2) If not, what relief, the Workman is entitled to?”

2. On receipt of the reference, a case was registered under No. IT/16/2006 and registered A/D notice was issued to the parties. In pursuance of the said notice the parties put in their appearance. The Workman/Party I filed his claim statement on 31-08-2007 at Exb. 7. The facts of the case in brief as pleaded by the Workman are that he was appointed as a ‘Watchman’ in regular vacancy and was posted at Mapusa vide letter of appointment of the Employer dated 12-11-1992. He stated that he continued to work as ‘Watchman’ honestly, diligently and without any adverse remark to his service till 31-10-1995. He stated that on 26-10-1995, the Managing Committee of the Employer called him and informed him that they have decided to engage Security Contractors for Watch and Ward duty w.e.f. 01-11-1995. He stated that he was also informed that from 01-11-1995, he would be required to work as a “Watchman” of the contractor and in case, if he is not agreeing to do so, his services would be terminated w.e.f. 01-11-1995. He stated that all along he was working as a direct employee of the Employer and as such he did not opt to join as a “Contract Security”. He stated that the Employer thereafter issued him a letter dated 26-10-1995 thereby terminating his services w.e.f. 01-11-1995. He stated that he continued to work upto 31-10-1995 and from 01-11-1995 he was not allowed to report for work. He stated that he had raised an industrial dispute before

the Assistant Labour Commissioner, Mapusa, which was subsequently referred to the Hon'ble Industrial Tribunal of Goa for its adjudication on failure of the conciliation. He stated that the parties thereafter arrived at settlement on 02-07-2001, which settlement was filed in the Ref. No. IT/50/97 and an award in terms of the said settlement was passed on 17-08-2001. He stated that as per the settlement dated 02-07-2001 and an Award dated 17-08-2001, he was re-employed as a ‘Peon’ w.e.f. 01-07-2001 with continuity in service and other benefits. He stated that he worked as ‘Peon’ from 01-07-2001 till 31-08-2004. He stated that the Employer terminated his services w.e.f. 01-09-2004 without any notice and during this period of service as a ‘Peon’ the Employer harassed him constantly, in order to get rid of him as he was taken the matter of his termination to the Tribunal. He stated that the harassment had increased from the time of re-election of Mr. Michael Carrasco as an attorney, who was instrumental to his termination in 1995 and appointment of special attorney. He stated that on 30-06-2004, the Employer issued a charge-sheet and letter of enquiry to him. He stated that he was called upon to file explanation to the same. He stated that he filed his explanation dated 08-07-2004. He stated that thereafter the Employer without conducting any disciplinary enquiry as contemplated under the industrial law, against him, made a finding report on 03-08-2004 and a copy of which was furnished to him vide show-cause notice dated 08-08-2004. He stated that he filed his reply dated 16-08-2004 in which he had challenged the enquiry on the grounds that the Enquiry Officer has violated the principles of natural justice as he was not given proper opportunity to make his defence and that, the reply dated 08-07-2004 by which he had requested for defence representative has not been considered and the enquiry has been conducted in total disregard to the set law on the enquiry and the material document such as award dated 17-08-2001, his reply dated 08-07-2004 have been withheld and not produced. He stated that without considering his explanation, the Employer terminated his services w.e.f. 01-09-2004. He submitted that the action of the Employer in terminating his services is illegal, unjust and by way of victimization. He stated that thereafter he made a demand dated 02-09-2004 on the Employer informing them that its action is illegal and unjust and therefore he is entitled for re-instatement in service with full back wages and continuity in service. He stated that since the Employer could not consider his demand, he raised an industrial dispute before the Assistant Labour Commissioner, Mapusa which ended in failure.

3. The Employer filed its written statement on 06-02-2008 at Exb. 25. The Employer controverted the claim of the Workman by stating that the Party I is not a "Workman" in terms of Industrial Disputes Act, 1947 and therefore the provisions of the Industrial Disputes Act is not applicable in the instant case. The Employer stated it is a body constituted in terms of the Code of Comunidade and are governed by the said Code, which is a special statute and which excludes all other Acts. The Employer stated that the Party I was appointed in terms of the Code of the Comunidade and has been dismissed in terms of the Code of Comunidade after following the procedure laid down in the said code. The Employer stated that the Industrial Disputes Act does not override the Code of Comunidade and therefore this Hon'ble Court has no jurisdiction to try and determine the above matter. The Employer stated that the Party I was removed in terms of the Code of Comunidade after following the procedure in terms of the R.O.U.F. which lays down the procedure in the event of any employee of the Comunidade to be removed from the service. The Employer denied that the Enquiry Officer has violated the principles of natural justice or that the Party I has not given proper opportunity to make his defence as alleged. The Employer stated that a perusal of the correspondence exchanged between the Party I and the Party II and more specifically the replies of the Party I as well as the findings given by the Enquiry Officer succinctly established that the Employer was justified in removing the Party I from services. The Employer stated that it is not a profit making organization nor it is a commercial undertaking and in fact has been constituted only in terms of Code of Comunidade. The Employer stated that the removal of the Party I is just and proper and there is no violation of principles of natural justice and in fact the conduct of the Party I speaks for itself. The Employer submitted that the Party I do not deserve any sympathy from this Hon'ble Court as the conduct of the Party I disentitle him from securing any relief from this Hon'ble Court. The Employer stated that the Party I having failed to discharge his duties, an Office Memorandum dated 23-03-2004 was issued to him and by reply dated 31-03-2004, he stated that he will work only as 'Peon' and not as a "Security Guard". The Employer stated that thereafter vide letter dated 16-04-2004 once again his attention was drawn to the fact that there was no sufficient work in their office and that the Comunidade does not need the services of a full time 'Peon' and a full time 'Security Guard' and if the Party I chooses not to discharge his duty, they would have to employ another person as a 'Watchman-cum-Peon'. The

Employer stated that the services of the 'Workman' are required only during wedding and public functions in the Comunidade Hall which is the rarest of rare occasions approximately 3 to 4 times in a month for a few hours. The Employer stated that on 24-04-2004, the Party I was instructed to discharge his duties as "Watchman" as there was a wedding reception scheduled, however he disobeyed the instructions given to him and deliberately abstained himself from performing his duties and therefore was guilty of indiscipline and insubordination and accordingly Office Memorandum dated 30-04-2004 was issued to him and instead of offering any explanation to the said Office Memorandum, the Party I on 04-05-2004 tried to justify his disobedience and with a degree of arrogance tried to convey that he will not perform other duties. He stated that on 11-05-2004, the Party I once again disobeyed the instructions of wiping the chairs and windows resulting in yet another Memorandum dated 23-05-2004 being issued to him. The Employer stated that they even got a uniform stitched for the Party I to perform his duty as a 'Watchman' and although he co-operated in getting the same stitched, by attending the tailors shop to give measurement, he refused to use the same after the same was ready. The Employer stated that the Party I has been disobedient and has never complied with the instructions given to him and is guilty of misconduct, indiscipline and insubordination resulting in the disciplinary enquiry being held against him. The Employer submitted that the disciplinary enquiry was conducted in terms of law and by following all the principles of natural justice as is evident from the records and proceedings of the said enquiry. The Employer therefore prayed that the claim of the Party I be dismissed and the issue be answered in the negative.

4. Thereafter, the Party I filed his rejoinder on 16-07-2008 at Exb. 26. The Party I by way of his rejoinder reiterates and confirms all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in its written statement which are contrary and inconsistent with the statement and averments made by him. The Party I denied that he was removed in terms of Code of Comunidade after following the procedure in terms of R.O.U.F. which lays down the procedure in the event of any employee of the Comunidade to be removed from services as alleged. He stated that in terms of the award dated 17-08-2001, he was reinstated in service as a 'Peon' w.e.f. 01-07-2001 with continuity in service and other benefits and therefore he has rightly refused to work as 'Security Guard'

and the orders of the Employer to that extent are contrary to law. He stated that the orders of the Employer to discharge the duties of a Watchman are neither legal nor reasonable and refusal to carry out such duties is not disobedience of the instructions. He stated that he has satisfactorily explained the memo dated 23-05-2004 issued to him by the Employer vide his reply dated 27-05-2004 to which the Employer has not made any reference in its written statement.

5. Based on the pleadings of the respective parties filed in the present proceedings, the Hon'ble Industrial Tribunal framed the following issues on 10-11-2008 at Exb. 28.

1. *Whether the Party I proves that he is a "Workman" within the meaning of Sec. 2(s) of the I. D. Act, 1947?*
2. *Whether the Party I proves that the enquiry held against him was not fair and proper?*
3. *Whether the Party I proves that action of the Party II in terminating his services w.e.f. 01-09-2004 is illegal and unjust?*
4. *Whether the charges of misconduct are against the Party I?*
5. *Whether the Party II proves that the Tribunal has no jurisdiction to try and decide the dispute referred by the appropriate Government?*
6. *What relief? What Award?*

6. My answers to the aforesaid issues are as under:

- Issue No. 1: In the affirmative.
 Issue No. 2: In the affirmative.
 Issue No. 3: In the affirmative.
 Issue No. 4: Does not arise.
 Issue No. 5: In the affirmative.
 Issue No. 6: As per final order.

REASONS

While deciding the issue Nos. 2 & 4, this Court vide its Order dated 03-09-2010 passed in its findings on preliminary issues Nos. 2 & 4, it has been held by me that the domestic enquiry held against the Workman is not fair and proper and hence the enquiry is set aside.

Issue No. 1:

I have heard the arguments of the Ld. Advocates appearing for the respective parties.

7. Ld. Adv. Shri P. J. Kamat representing the Workman during the course of his oral arguments

as well as in his synopsis of written arguments filed in the present proceedings submitted that the Party I was designated as "Peon" w.e.f. 01-07-2001 in pursuance to the Order passed by the Hon'ble Industrial Tribunal, Panaji-Goa disposing off its reference bearing No. IT/50/97 in its Award in terms of settlement made on 17-08-2001. He submitted that as a "Peon" the primary duties of the Party I were to clean the office, go to the bank for depositing the cheques, serve notices, serve tea etc. He submitted that the aforesaid duties performed by the Party I while in the employment of the Employer are manual and unskilled in nature. The Party I is therefore a "Workman" as defined u/s 2(s) of the I. D. Act, 1947.

8. On the contrary, Ld. Adv. Shri B. D. Nazareth representing the Employer during the course of his oral arguments as well as synopsis of written arguments filed in the present proceedings submitted that neither the Party I is a "Workman" nor it is an "Industry" within the meaning of provisions of the I. D. Act, 1947.

I have carefully perused the records of the present case. I have also carefully considered the various legal submissions made by the Ld. Advocates appearing for the respective parties.

Since the Employer disputed the status of the Party I as 'Workman' within the meaning of Section 2(s) of the I. D. Act, 1947 it is necessary to refer the provision of Section 2(s) of the I. D. Act, 1947 which defines the term "Workman" and it reads as under:

Section 2 (s), 'Workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or dismissal, discharge or retrenchment has laid to that dispute, but does not include any such person.

- (1) *who is subject to the AIR Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or*
- (2) *who is employed in the police service or as an Officer or other employee of a prison or*
- (3) *who is employed mainly in a managerial or administrative capacity*
- (4) *who, being employed in a supervisory capacity draws wages exceeding ₹ 1,600/- per mensem*

or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

10. Thus, in order to prove that the Party I is/was a "Workman" as defined u/s 2(s) of the I. D. Act, 1947, he has to prove two preconditions, one that he was employed in any "industry" within the meaning of Sec. 2 (j) of the I. D. Act, 1947 and another that he was performing the duties of manual, unskilled, skilled, technical, operational, clerical or supervisory work and it is not enough that he/she was not performing the duties of supervisory, administrative and managerial in nature.

11. The term "Industry" has been defined u/s 2 (j) of the I. D. Act, 1947 and it means "any systematic activity carried on by co-operation between an employer and his Workman (whether such Workman are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

- (i) Any capital has been invested for the purpose of carrying on such activity; or
- (ii) Such activity is carried on with a motive to make any gain or profit, and includes—
 - (a) Any activity of the Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);
 - (b) Any activity relating to the promotion of sales or business or both carried on by an establishment.

But does not include—

- (1) Any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation:- For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951; or

- (2) hospitals or dispensaries, or

- (3) educational, scientific research training institute; or
- (4) institutions owned or managed by organization wholly or substantially engaged in any charitable, social, or philanthropic service; or
- (5) khadi or village industries; or
- (6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defense research, atomic energy and space,
- (7) any domestic service; or
- (8) any activity, being a profession practiced by an individual or body of individuals, if the number of persons employed by an individual or body of individuals in relation to such profession is less than ten; or
- (9) any activity, being an activity carried on by co-operative society or club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.]"

12. In the case of **Bangalore Water Supply and Sewage Board v/s A. Rajappa and ors, reported in AIR 1978 SC 548** the Hon'ble Apex Court in para 161 of its judgment has observed as under:

"161" "Industry" as defined in Section 2(j) and explained in **Banerji (AIR 1953 SC 58)** has a wide importance.

- (a) where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale Prasad or food) prima facie, there is an 'industry' in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

- (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.
- II. Although Sec. 2 (j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.
- (a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra). Although not trade or business, may still be 'industry' provided the nature of the activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertakings callings and services, adventures 'analogous to the carrying on of trade businessor'. All features other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar, it does not matter, if on the employment terms there is analogy.
- III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for resultant of the economic operations. The ideology of the Act being industrial peace regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition, nothing less, nothing more.
- (a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes (vi) Charitable projects and (vii) other kindred adventures, if they fulfill the triple test listed in I (supra), cannot be exempted from the scope of section 2(j).
- (b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures substantially and going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.
- (c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria

or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services, clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempted not other generosity compassion, developmental passion or project

IV. The dominant nature test.

- (a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the **University of Delhi case (AIR 1963 SC 1873)** or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and the integrated nature of the departments as explained in the **Corporation of Nagpur (AIR 1960 SC 675)** will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.
- (b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by the government or statutory bodies.
- (c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Sec. 2(j).
- (d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

The law laid down by the Hon'ble Apex Court in its aforesaid case still holds good.

13. In the case in hand, the Employer in the written statement filed in the present proceedings by way of preliminary objection contended that this code has no jurisdiction, but did not contend that this is not an 'industry' as defined u/s 2(j) of the I. D. Act,

1947 nor produce any material evidence to prove that it is not an 'industry'. Thus impliedly admits that it is an 'Industry'. Even otherwise, the Party I in his oral evidence on record deposed that the Employer developed plots and leased the same to several persons. The Party I also deposed that the Employer owns a building at Mapusa and in the said building there are three halls and shops situated on the ground floor. He deposed that the shops are rented to various parties. He deposed that the Employer gives on hire the said three halls for receptions, parties and other functions and receives the rent for the same. He also deposed that the Employer owns a property near Bogdeswar Temple at Mapusa which are given on rent for commercial activities. The employer is administering its activities by employing 7-8 employees. Thus there exist an Employer-Employee relationship between the Employer and its Employees. The afore said oral evidence adduced on record by the workmen has neither denied nor produced any evidence in rebuttal by the Employer to prove that it is not an 'industry'. Hence it is held the Employer Institution is running its various activities systematically with the Co-operation of its employees employed for that purpose and derives profits from the same. Hence it is held that the Employer is an 'Industry' within the meaning of Sec. 2 (j) of the I. D. Act, 1947.

14. The another pre-condition required to be proved is that he was performing the duties of manual, unskilled, skilled, technical, operational, clerical or supervisory work and it is not enough that he/she was not performing the duties of supervisor, administrative and managerial in nature.

It is settled principles of industrial jurisprudence that whether a particular employee is a 'Workman' or not, as defined under Section 2(s) of the Industrial Disputes Act, 1947 depends upon the predominant nature of duties and responsibilities performed by him at the time of termination of his services.

15. In the case in hand, admittedly, the Party I was designated as 'Peon' at the time of termination of his services and as 'Peon' his primary and basic duties were to clean the office, go to the bank for depositing the cheques, serve notices, serve tea etc. The aforesaid duties performed by the Party I are certainly manual and unskilled in nature. The Party I is therefore a 'Workman' as defined u/s 2(s) of the I. D. Act, 1947. It is therefore held that the Party I successfully proved that he is a "Workman" as defined u/s 2(s) of the I. D. Act, 1947. The Issue No. 1 is therefore answered in the affirmative.

Issue No. 5:

16. I am deciding the issue No. 5 first prior to the issue No. 3 as it touches upon the very root jurisdiction of this Court to adjudicate the present Order of Reference issued by the Govt. of Goa.

I have heard the arguments of Ld. Advocates appearing for the respective parties.

17. Ld. Adv. Shri P. J. Kamat representing the Workman during the course of his oral arguments as well as his synopsis of written arguments submitted that it is the Employer, who by way of preliminary objection contended that this Court has no jurisdiction to adjudicate the present reference issued by the Govt. of Goa by alleging that the I. D. Act does not overwrite the Code of Comunidade, hence the burden to prove the aforesaid contention is on them. He submitted that the Code of Comunidade does not provide any provisions for settlements and adjudication of the dispute pertaining to change in service conditions, illegal termination of its workers etc. On the contrary, it is the I. D. Act, 1947 which provides the machinery for the settlement as well as adjudication of the disputes between the Employers and Employers, Employers and Workmen and Workmen and Workmen etc. He submitted that since the Party I is a 'Workman' and the Employer is an 'Industry' within the meaning of the said Act and hence the dispute raised by the Workman pertaining to his non-employment is an "Industrial Dispute" within the meaning of expression 'Industrial Dispute' as defined under the said act and hence this Court has very jurisdiction to adjudicate the present reference issued by the Govt. of Goa pertaining to the non-employment of the Workman.

18. On the contrary, Ld. Adv. Shri B. D. Nazareth during the course of his oral arguments as well as his synopsis of written arguments submitted that neither the Party I is a 'Workman' nor the Party II is an "Industry" within the meaning of the provisions of the I. D. Act, 1947 and hence this Court has no jurisdiction to adjudicate the present dispute referred by the Govt. of Goa. He submitted that the Party II is a Comunidade, governed by the Code of Comunidade and the services of the workers of the Party II including the Party I are governed by provisions of the Goa, Daman & Diu, Comunidade Employees (conditions of service) Act, 1981 and the rules made thereunder. He pointed out certain provisions of the Code of Comunidade in support of his aforesaid oral contention. He submitted that the Legislative Diploma 2070 of Code of Comunidade is a self contained Code, which provides for

procedure for appointment, enquiry, punishment and dismissal of the employees of the Comunidade.

I have carefully perused the records of the present case. I have also carefully considered the various oral as well as written legal submissions made by the Ld. Advocates appearing for the respective parties.

19. The Industrial Disputes Act, 1947 is a Central Legislation came into force with an object to make provisions for the investigation and settlement of Industrial Dispute and for certain other purposes. The act has been extended to Goa, Daman and Diu by Regn. 12 of 1962. The expression 'Industrial Dispute' has been defined u/s 2(k) of the I. D. Act and it means any dispute or difference between Employers and Employers or between Employers and Workmen or between Workmen and Workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person. Therefore, any dispute or difference between Employers and Employers or between Employers and Workmen or between Workmen and Workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person constitutes an industrial dispute provided that the Employer shall be an 'Industry' within the meaning of Sec. 2(j) of the I. D. Act, 1947. The Employer is a Comunidade governed by the Code of Comunidades. The said Code of Comunidade is a State Legislation which deals with the constitution and administration of Comunidades. The said Code of Comunidade however, does not provide any by-laws or provisions for the investigation and settlement of industrial dispute and for certain other purpose. However, the Code of Comunidade provides the regulations for conditions of service of its employees in Goa, Daman and Diu, Comunidade Employees (Condition of Service) Act, 1981 and the Goa, Daman and Diu Comunidade Employees (Condition of Service) Rules, 1982, Rule 15 of Goa, Daman and Diu, Comunidade Employees (Condition of Service) Rules, 1982, provides for disciplinary proceedings and Rule 16 provides for conditions of service in certain other cases. Thus, the Code of Comunidade contain any provisions pertaining to the investigation and settlement of disputes or differences between the Comunidade and its employees pertaining to employment or non-employment or the terms of employment or with the conditions of labour of any persons. In my view, if it is proved that the dispute or the difference between the Comunidade and its Workmen is an industrial dispute as define u/s 2 (k)

of the I. D. Act, 1947, this Court has every jurisdiction to adjudicate the present reference issued by the Government.

20. In the case in hand, while deciding the issue No. 1, I have already come to the conclusion and held that the Party I is a "Workman" as defined u/s 2 (s) of the I. D. Act, 1947 and the Employer is an "Industry" within the meaning of Sec. 2 (j) of the said Act. Since the present dispute raised by the Workman against the Employer pertaining to his non-employment, the dispute raised by the Workman is an "Industrial Dispute" within the meaning of Sec. 2 (k) of the I. D. Act, 1947 and as such this Labour Court/Industrial Tribunal has every jurisdiction to adjudicate the present dispute referred by the Govt. of Goa in its discretionary power vested under Sec. 10 (1) (d) of the I. D. Act, 1947. It is therefore held that the contention of the Employer that the Industrial Disputes Act, does not override the Code of Comunidade and therefore, this Hon'ble Court has no jurisdiction to adjudicate the present reference is without any merits. Admittedly, provisions of the Goa, Daman & Diu Comunidade Employees (Condition of Service) Act, 1981 and the Goa, Daman & Diu Comunidade Employees (Condition of Service) Rules, 1982 provides for the service conditions for the employees of the Comunidade existing in the State of Goa which includes the provisions for disciplinary proceedings. In terms of Rule 15 of the Goa, Daman & Diu Comunidade Employees (Condition of Service) Rules, 1982 the disciplinary proceedings against any of the employees of the Comunidade shall be conducted in accordance with the Central Rules i.e. Civil Central Service Rules as applicable to the Employees of the Government. However it does not ipso facto mean that the provisions of the Industrial Disputes Act, 1947 are not applicable to the present reference as the dispute acquires the status of Industrial dispute within the meaning of Sec. 2 (k) of the I. D. Act, 1947. Hence it is held that the preliminary objections raised by the Employer is without any merits. The issue No. 5 is therefore answered in the negative.

Issue No. 3:

I have heard the arguments of Ld. advocates appearing for the respective parties.

21. Ld. Adv. Shri P. J. Kamat representing the Workman during the course of his oral arguments as well as his synopsis of written arguments submitted that this Hon'ble Court vide its Order dated 03-09-2010 passed in its findings on preliminary issues No. 2 & 4 held that the domestic enquiry held against the Workman is not fair proper and hence

the enquiry is set aside. He submitted that the Employer, having failed to prove the preliminary issues No. 2 & 4 nor could obtain leave of this Hon'ble Court to prove the misconduct levelled against the Workman in support of its action of termination of services of the Workman, also failed to justify its action in terminating the services of the Workman w.e.f. 01-09-2004 is legal and justified.

22. On the contrary Ld. Adv. Shri B. D. Nazareth representing the Employer during the course of his oral arguments as well as his synopsis of written arguments submitted that the Workman in his cross examination deposed that "I was told to get mud for the garden. I had told the Party II that it was not part of my duty and I refused to do the said work". He submitted that the aforesaid oral evidence of the Workman on record clearly indicates that the Workman refused the lawful order/instructions given to him. He submitted that the aforesaid deposition of the Workman on record clearly proves the charge of insubordination and an act of indiscipline. He therefore submitted that the action of the Employer in terminating the services of the Workman is therefore perfectly legal and justified.

I have carefully perused the records of the present case. I have also carefully considered the various oral as well as written legal submissions made by the Ld. Advocates appearing for the respective parties.

23. While deciding the issues No. 2 & 4, this Court vide its Order dated 03-09-2010 passed in its findings on preliminary issues No. 2 & 4, it has been held by me that the domestic enquiry held against the Workman is not fair and proper and hence the enquiry is set aside. The Employer thereafter filed an application seeking leave of this Court to lead additional evidence to establish the misconduct on the part of the Workman, after the final arguments were partly heard. The said application of the Employer was dismissed vide Order of this Court dated 12-01-2012. Thus, the Employer failed to prove the charges of misconduct levelled against the Workman. The Employer, having failed to prove the charges of misconduct levelled against the Workman either by holding a fair and proper enquiry against him or by leading an evidence before this Court, also failed to prove the legality as well as justifiability in terminating the services of the Workman w.e.f. 01-09-2004.

24. Undisputedly, initially the Workman was appointed as "Watchman" by the Employer vide appointment letter dated 12-11-1992 issued to him which is on record at Exb. 11. The evidence on

record indicates that the Workman had raised an Industrial Dispute pertaining to the action of the Employer in terminating his services w.e.f. 01-11-1995. The evidence on record further indicates that the said industrial dispute raised by the Workman had been referred by the Government to the Industrial Tribunal of Goa. The evidence on record indicates that the Workman as well as the Employer settled the said dispute amicably and accordingly the Hon'ble Industrial Tribunal vide its Order passed in the Award dated 17-08-2001 finally disposed off the said dispute raised by the Workman. As per clause 1 of the said Order passed by the Hon'ble Industrial Tribunal in its reference bearing No. IT/50/97, the Employer has agreed to reinstate the Workman as a "Peon" w.e.f. 01-07-2001 with continuity in service and other benefits. The evidence on record indicates that the Workman was thereafter reinstated back as a "Peon" in the service of the Employer w.e.f. 01-07-2001. The evidence on record further indicates that there is nothing on record to show that the designation as well as duties and responsibilities of the Workman was changed from "Peon" to "Watchman-cum-Security Guard" or that the Workman was given the additional responsibilities of "Watchman-cum-Security Guard" in addition to his duties as "Peon". Therefore, any instructions/orders issued to the Workman apart from his lawful duties and responsibilities are ultra virus and hence not binding on the Workman. It is therefore held that the Workman proves that the action of the Employer in terminating his services w.e.f. 01-09-2004 is illegal and unjustified. The issue No. 3 is therefore answered in the affirmative.

Issue No. 6:

While deciding, the issue No. 3 hereinabove, I have come to the conclusion and held that the action of the Employer in terminating the services of the Workman is illegal and unjustified.

25. In the case of **Kendriya Vidyalaya Sangathan and Anr v/s S. C. Sharma**, reported in **2005(104) FLR 863**, the Hon'ble Apex Court in para-15 of its aforesaid Judgement has ruled as under:

"15..... When the question of determining the entitlement of a person to back wages is concerned the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places material in that regard, the Employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard."

26. The Hon'ble Supreme Court of India in its another case of **Jagbir Singh v/s Haryana State Agriculture Marketing Board & anr.** reported in **2009 III CLR 628** it has been held that *"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in the recent past there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given factual situation even though the termination of an employee in contravention of the prescribed procedure, compensation instead of reinstatement has been held to meet the ends of justice"*.

27. In the case of **M/s. Reetu Marbles v/s Prabhakant Shukla and Anr.** reported in **2010 (124) FLR 72**, the Hon'ble Supreme Court of India has held that *"Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now with the passage of time in pragmatic view of the matter is being taken up by the Court realizing that an industry may not be compelled to pay to the Workman for the period during which he apparently contributed little of nothing at all to it and/or for a period that was spent unproductively as a result whereof the Employer would be compelled to go back to a situation which prevailed many years ago, namely, when the Workman was retrenched"*.

28. Thus, the Hon'ble Apex Court in its various series of decisions has consistently held that a relief of reinstatement with full back wages and consequential benefits is not automatic, even if the termination of the Workman is illegal or in contravention of prescribed procedures. I am bound by the precedent laid down by the Hon'ble Apex Court in its aforesaid decisions.

29. In the case in hand the Workman has however failed to plead that since after the termination of his services w.e.f. 01-09-2004, he is unemployed. The Workman has however in his oral evidence on record deposed that he is unemployed. The evidence on record also indicates that the age of the Workman as on filing of his affidavit-in-evidence i.e. on 15-11-2007 was 46 years. Thus, taking into consideration length of service with the Employer, their age, educational qualifications, nature of employment and like factors etc. in my considered view, the reinstatement of the Workman alongwith the continuity in service with 50% of

back wages will be fair and proper to meet the ends of justice.

In view of the above, I proceed ahead to adjudicate the reference as under:

ORDER

1. It is held that the action of the Comunidade de Mapusa, Mapusa, Bardez-Goa in refusing the employment to their Workman Shri Raghuvir S. Parsekar, Peon w.e.f. 01-09-2004 is illegal and unjustified.

2. The Management of Comunidade de Mapusa, Mapusa, Bardez-Goa is hereby directed to reinstate of the Workman alongwith the continuity in service with 50% of back wages immediately.

3. No order as to costs.

4. Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 24/3/2003-Lab/160

In exercise of the powers conferred by Section 65 of the Goa, Daman and Diu, Shops and Establishments Act, 1973 (Act 13 of 1974) (hereinafter referred to as the 'said Act'), the Government of Goa hereby suspends the operation of the Provisions of sub-section (1) of Section 4 and sub-section (1) of Section 8 of the said Act in respect of all the Shops and Establishments situated in the area as specified in column (4) of the Schedule hereto, for the period shown in the corresponding entry in Column (3) of the said Schedule, subject to the following conditions, namely:

- (i) The shops shall remain closed in any other day in the week;
- (ii) The Employees shall be given Holiday on any other day within the week; and
- (iii) The Employees who are made to work beyond 8 hours on any day or 48 hours in the week shall be paid overtime wages at double the normal rate.

SCHEDULE					1	2	3	4	5
Sr. No.	Name of the Festival	Period	Area for which exemption is given	Provisions from which exemption is given					
1	2	3	4	5					
1.	Fatorpa Zatra (Shri Shantadurga Cuncolikarin)	1-1-2012 to 3-1-2012	All the Shops & Establishments situated at Fatorpa	Weekly closed day and opening and closing hours.	9.	Mardol Zatra	11-2-2012	All the Shops & Establishments situated at Mardol	Weekly closed day and opening and closing hours.
2.	Feast of Three Kings	6-1-2012	All the Shops & Establishments situated at Verem-Betim	Weekly closed day and opening and closing hours.	10.	Ramnathi Zatra	20-2-2012	All the Shops & Establishments situated at Ramnathi	Weekly closed day and opening and closing hours.
3.	Feast of Three Kings	6-1-2012	All the Shops & Establishments situated at Cansaulim	Weekly closed day and opening and closing hours.	11.	Shivnathi Zatra	20-2-2012	All the Shops & Establishments situated at Shiroda	Weekly closed day and opening and closing hours.
4.	Shri Bodgeshwar Zatra	8-1-2012	All the Shops & Establishments situated at Mapusa	Weekly closed day and opening and closing hours.	12.	Sanguem Mahashiv-ratri	20-2-2012	All the Shops & Establishments situated at Sanguem	Weekly closed day and opening and closing hours.
5.	Shri Devki Krishna Zatra	9-1-2012	All the Shops & Establishments situated at Marcel	Weekly closed day and opening and closing hours.	13.	Mahashiv-ratri	20-2-2012	All the Shops & Establishments situated in the State of Goa	Weekly closed day and opening and closing hours.
6.	Shantadurga Zatra	28-1-2012	All the Shops & Establishments situated at Kavalem	Weekly closed day and opening and closing hours.	14.	Kamakshi Zatra	22-2-2012	All the Shops & Establishments situated at Shiroda	Weekly closed day and opening and closing hours.
7.	Hanuman Zatra (Mala Panaji)	2-2-2012	All the Shops & Establishments situated at Panaji	Weekly closed day and opening and closing hours.	15.	Khandola Zatra	23-2-2012	All the Shops & Establishments situated at Khandola	Weekly closed day and opening and closing hours.
8.	Mangeshi Zatra	7-2-2012	All the Shops & Establishments situated at Mangeshi	Weekly closed day and opening and closing hours.	16.	Holi	8-3-2012	All the Shops & Establishments situated in the State of Goa	Weekly closed day and opening and closing hours.
					17.	Zambaulim Shigmo	20-3-2012	All the Shops & Establishments situated at Quepem	Weekly closed day and opening and closing hours.

1	2	3	4	5	1	2	3	4	5
18. Gudi Padva	23-3-2012	All the Shops & Establishments situated in the State of Goa	Weekly closed day and opening and closing hours.		27. Tilamol Feast	6-5-2012	All the Shops & Establishments situated at Quepem	Weekly closed day and opening and closing hours.	
19. Borim Zatra	1-4-2012	All the Shops & Establishments situated at Borim	Weekly closed day and opening and closing hours.		28. Sanguem Feast	19-5-2012	All the Shops & Establishments situated at Sanguem	Weekly closed day and opening and closing hours.	
20. Chaitri Festival	2-4-2012 to 6-4-2012	All the Shops & Establishments situated at Sanquelim	Weekly closed day and opening and closing hours.		29. Quepem Feast	20-5-2012	All the Shops & Establishments situated at Quepem	Weekly closed day and opening and closing hours.	
21. Nageshim Zatra	6-4-2012	All the Shops & Establishments situated at Nageshim	Weekly closed day and opening and closing hours.		30. Saptah	25-7-2012	All the Shops & Establishments situated at Vasco	Weekly closed day and opening and closing hours.	
22. Maruti Gad Zatra	6-4-2012 to 8-4-2012	All the Shops & Establishments situated at Curchorem, Goa	Weekly closed day and opening and closing hours.		31. Id-UI-Fitr	20-8-2012	All the Shops & Establishments situated in the State of Goa	Weekly closed day and opening and closing hours.	
23. Good Friday	6-4-2012	All the Shops & Establishments situated in the State of Goa	Weekly closed day and opening and closing hours.		32. Ganesh Chaturthi	19-9-2012	All the Shops & Establishments situated in the State of Goa	Weekly closed day and opening and closing hours.	
24. Milagres Feast	23-4-2012	All the Shops & Establishments situated at Mapusa	Weekly closed day and opening and closing hours.		33. Ganesh Chaturthi	20-9-2012	All the Shops & Establishments situated in the State of Goa	Weekly closed day and opening and closing hours.	
25. Lairai Zatra	26-4-2012	All the Shops & Establishments situated at Sirigao, Assonora	Weekly closed day and opening and closing hours.		34. Dussehara (Vijaya Dashmi)	24-10-2012	All the Shops & Establishments situated in the State of Goa	Weekly closed day and opening and closing hours.	
26. Veling Zatra	4-5-2012	All the Shops & Establishments situated at Veling	Weekly closed day and opening and closing hours.		35. Diwali	13-11-2012	All the Shops & Establishments situated in the State of Goa	Weekly closed day and opening and closing hours.	

1	2	3	4	5	1	2	3	4	5
36. Curchorem Feast	25-11-2012	All the Shops & Establishments situated at Curchorem	Weekly closed day and opening and closing hours.		45. Hadkon Banastarim Zatra	13-12-2012	All the Shops & Establishments situated at Banastarim	Weekly closed day and opening and closing hours.	
37. Madgao Dindi	26-11-2012	All the Shops & Establishments situated at Margao	Weekly closed day and opening and closing hours.		46. Kapileshwari Zatra	14-12-2012	All the Shops & Establishments situated at Kapileshwari	Weekly closed day and opening and closing hours.	
38. Nageshi Zatra	29-11-2012	All the Shops & Establishments situated at Nageshi	Weekly closed day and opening and closing hours.		47. Savoi Verem Zatra	15-12-2012	All the Shops & Establishments situated at Savoi Verem	Weekly closed day and opening and closing hours.	
39. Feast of St. Andrew	30-11-2012	All the Shops & Establishments situated at Vasco	Weekly closed day and opening and closing hours.		48. Vijayadurga Zatra	22-12-2012	All the Shops & Establishments situated at Keri	Weekly closed day and opening and closing hours.	
40. Feast of St. Francis Xavier	3-12-2012	All the Shops & Establishments situated at Old Goa	Weekly closed day and opening and closing hours.		49. Christmas Day	25-12-2012 to 26-12-2012	All the Shops & Establishments situated in the State of Goa	Weekly closed day and opening and closing hours.	
41. Mary Immaculate Conception Feast	8-12-2012	All the Shops & Establishments situated at Panaji	Weekly closed day and opening and closing hours.		50. Navadurga Zatra	26-12-2012	All the Shops & Establishments situated at Kundaim	Weekly closed day and opening and closing hours.	
42. Mary Immaculate Conception Feast	8-12-2012	All the Shops & Establishments situated at Margao	Weekly closed day and opening and closing hours.		51. Datta Jayanti	27-12-2012	All the Shops & Establishments situated at Sanquelim	Weekly closed day and opening and closing hours.	
43. Madkai Zatra	8-12-2012	All the Shops & Establishments situated at Marcaim	Weekly closed day and opening and closing hours.		52. Shiroda Shivnath Zatra	28-12-2012	All the Shops & Establishments situated at Shiroda	Weekly closed day and opening and closing hours.	
44. Khandepar Zatra	11-12-2012	All the Shops & Establishments situated at Khandepar	Weekly closed day and opening and closing hours.		<p>By order and in the name of the Governor of Goa.</p> <p><i>Hanumant T. Toraskar</i>, Under Secretary (Labour).</p> <p>Porvorim, 28th March, 2012.</p>				

Department of Law and Judiciary

Law (Establishment) Division

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Order

File No. LS/1077/93-Part/376

Government of Goa is pleased to appoint Adv. Shri Kaif Akberali Noorani, as Additional Government Advocate to appear and defend the interests of the Government in the matters before the High Court of Bombay at Goa, Panaji with immediate effect and until further orders.

He will be paid fees as per the existing terms and conditions laid down by the Government, applicable to Government Advocates, amended from time to time, on submission of bills (in duplicate) alongwith the attendance certificate, issued by the Registrar of the High Court of Bombay, Panaji-Goa. He should comply with the instructions contained in the Government Circular No. 4-43-99/LD dated 4-5-2000. He will appear in those matters, which would be allotted to him by the Ld. Advocate General.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Law-Estt.).

Porvorim, 16th March, 2012.

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Order

File No. LS/1077/93-Part/375

Government of Goa is pleased to appoint Adv. Shri Pradosh P. Dangui, as Additional Government Advocate to appear and defend the interests of the Government in the matters before the High Court of Bombay at Goa, Panaji with immediate effect and until further orders.

He will be paid fees as per the existing terms and conditions laid down by the Government, applicable to Government Advocates, amended from time to time, on submission of bills (in duplicate) alongwith the attendance certificate, issued by the Registrar of the High Court of Bombay, Panaji-Goa. He should comply with the instructions contained in the Government Circular No. 4-43-99/LD dated 4-5-2000. He will appear in those matters, which would be allotted to him by the Ld. Advocate General.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Law-Estt.).

Porvorim, 16th March, 2012.

Order

File No. LS/1077/93-Part/380

Government of Goa is pleased to appoint Adv. Shri Shashank Subhash Narvekar, as Additional Government Advocate to appear and defend the interests of the Government in the matters before the High Court of Bombay at Goa, Panaji with immediate effect and until further orders.

He will be paid fees as per the existing terms and conditions laid down by the Government, applicable to Government Advocates, amended from time to time, on submission of bills (in duplicate) alongwith the attendance certificate, issued by the Registrar of the High Court of Bombay, Panaji-Goa. He should comply with the instructions contained in the Government Circular No. 4-43-99/LD dated 4-5-2000. He will appear in those matters, which would be allotted to him by the Ld. Advocate General.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Law-Estt.).

Porvorim, 16th March, 2012.

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Order

File No. LS/1077/93-Part/378

Government of Goa is pleased to appoint Adv. Shri Pankaj P. Pai Vernekar, as Additional Government Advocate to appear and defend the interests of the Government in the matters before the High Court of Bombay at Goa, Panaji with immediate effect and until further orders.

He will be paid fees as per the existing terms and conditions laid down by the Government, applicable to Government Advocates, amended from time to time, on submission of bills (in duplicate) alongwith the attendance certificate, issued by the Registrar of the High Court of Bombay, Panaji-Goa. He should comply with the instructions contained in the Government Circular No. 4-43-99/LD dated 4-5-2000. He will appear in those matters, which would be allotted to him by the Ld. Advocate General.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Law-Estt.).

Porvorim, 16th March, 2012.

Order

File No. LS/1077/93-Part/379

Government of Goa is pleased to appoint Adv. Shri Dattaprasad Vithal Prabhu Lawande, as Government Advocate to appear and defend the interests of the Government in the matters before the High Court of Bombay at Goa, Panaji with immediate effect and until further orders.

He will be paid fees as per the existing terms and conditions laid down by the Government, applicable to Government Advocates, amended from time to time, on submission of bills (in duplicate) alongwith the attendance certificate, issued by the Registrar of the High Court of Bombay, Panaji-Goa. He should comply with the instructions contained in the Government Circular No. 4-43-99/LD dated 4-5-2000. He will appear in those matters, which would be allotted to him by the Ld. Advocate General.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Law-Estt.).
Porvorim, 16th March, 2012.

Order

File No. LS/1077/93-Part/377

Government of Goa is pleased to appoint Adv. Prachi P. Sawant, as Additional Government Advocate to appear and defend the interests of the Government in the matters before the High Court of Bombay at Goa, Panaji with immediate effect and until further orders.

She will be paid fees as per the existing terms and conditions laid down by the Government, applicable to Government Advocates, amended from time to time, on submission of bills (in duplicate) alongwith the attendance certificate, issued by the Registrar of the High Court of Bombay, Panaji-Goa. She should comply with the instructions contained in the Government Circular No. 4-43-99/LD dated 4-5-2000. She will appear in those matters, which would be allotted to her by the Ld. Advocate General.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Law-Estt.).
Porvorim, 16th March, 2012.

Order

No. 8/33/2005/LD(Estt)

Government of Goa is pleased to order the transfer and posting of Shri Ramdas Pednekar, Civil Registrar-cum-Sub-Registrar, Bicholim, as Civil Registrar-cum-Sub-Registrar, in the office of the State Registrar-cum-Head of Notary Services, Panaji--Goa, with immediate effect.

Shri Chandrakant Pissurlekar shall take the charge of the post of Civil Registrar-cum-Sub-Registrar, Bicholim with immediate effect, thereby relieving Shri Pednekar to report to the Head Office.

Shri Chandrakant Pissurlekar, Civil Registrar-cum-Sub-Registrar, Mapusa shall hold charge of the post of Civil Registrar-cum-Sub-Registrar, Bicholim in addition to his own duties until further order.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Law-Estt.).
Porvorim, 2nd April, 2012.

High Court of Judicature Appellate Side, Bombay**Resolution No. A.3902/G/2012**

Read: 1) Letter No. DSC/Valpoi-100/2012/983, dated 2nd February, 2012 received from the I/c Principal District & Sessions Judge, North Goa, Panaji.

RESOLUTION: The Honourable High Court is pleased to permit Ms. Shilpa Shashikant Pandit, Civil Judge, Junior Division and Judicial Magistrate First Class, Satari at Valpoi, to sit twice a week at Satari at Valpoi i.e. Monday & Wednesday and for remaining days of the week at "B" Court, Bicholim, on deputation.

High Court, Bombay (S. B. Shukre),
Registrar General.

Dated: 7th March, 2012.

Notification by the High Court of Judicature Appellate side, Bombay**No. A.3902/G/2012**

The Hon'ble the High Court is pleased to post on promotion Smt. Shaikh Shabnam from the cadre of Civil Judge, Junior Division and Judicial Magistrate,

First Class to the cadre of Senior Civil Judge, purely on ad hoc and temporary basis as Civil Judge, Senior Division and Judicial Magistrate, First Class, District Margao.

High Court, Bombay (S. B. Shukre),
Registrar General.

Dated: 10th March, 2012.

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Department of Panchayati Raj and Community Development

Directorate of Panchayats

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Notification

No. 26/25/DP/DPC/N/2012

In exercise of the powers conferred by Section 239 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994), and in supersession of the Government Notification No. 26/25/DP/DPC/N/2009 dated 17-08-2009 published in the Official Gazette (Extraordinary No. 3), Series II No. 23 dated 17-08-2009, the Government of Goa is pleased to re-constitute the District Planning Committee for the North District, consisting of the following members and permanent invitees, namely:

Sr. No.	Names of the Members	
(1)	Adhyaksha of North Goa Zilla Panchayat	... Ex-officio Chairperson.
(2)	Member of Parliament North Goa (Constituency)	... Member.
(3)	Mayor of the Corporation of the City of Panaji	... Member.
(4)	Smt. Meghana Yende, Member of North Goa Zilla Panchayat	... Member.
(5)	Smt. Abelina Menezes, Member of North Goa Zilla Panchayat	... Member.
(6)	Smt. Srimati Manjrekar, Member of North Goa Zilla Panchayat	... Member.
(7)	Smt. Surangi Harmalkar, Member of North Goa Zilla Panchayat	... Member.
(8)	Shri Deepak Kalangutkar, Member of North Goa Zilla Panchayat	... Member.

(9)	Shri Ashok Gawas, Member of North Goa Zilla Panchayat	... Member.
(10)	Shri Jayesh Salgaonkar, Member of North Goa Zilla Panchayat	... Member.
(11)	Shri Laxmikant Parab, Member of North Goa Zilla Panchayat	... Member.
(12)	Shri Shivdas Gawde, Member of North Goa Zilla Panchayat	... Member.
(13)	Dr. Vasudev Rajendra Deshpabhu, Councillor of Pernem Municipal Council	... Member.
(14)	Smt. Rupa Bhakta, Councillor of Mapusa Municipal Council	... Member.
(15)	Shri Riaz A. Baig, Councillor of Bicholim Municipal Council	... Member.
(16)	Shri Yeshwant Madkar, Councillor of Sanquelim Municipal Council	... Member.
(17)	Shri Shaikh Idrus, Councillor of Valpoi Municipal Council	... Member.
(18)	Shri Kishor K. Naik, Councillor of Ponda Municipal Council	... Member.
(19)	All members of the Legislative Assembly of Goa whose constituencies lie within the North Goa District	... Permanent invitees.

The Chief Executive Officer of the North Goa Zilla Panchayat shall be the Secretary of the District Planning Committee for the North Goa District.

Every Panchayat, Zilla Panchayat and Municipal Council/Corporations falling within the area of North Goa District shall, at the beginning of every Five Year Plan period, prepare a Five Year Plan and by the end of January of every year, prepare an Annual Plan and submit it to the said District Planning Committee for the North Goa District. The said District Planning Committee shall consolidate the plans prepared by the Zilla Panchayat, Panchayats and Municipal Councils/Corporations in the district and prepare a draft development plan for the district as a whole.

The District Planning Committee for the North Goa District shall, in preparing the draft development plan,—

(a) have regard to,

(i) the matters of common interest between the Zilla Panchayat, Panchayats and Municipal Councils/Corporations in the district including special planning, sharing of water and other physical and natural resources, the integrated development of infrastructures and environmental conservation;

(ii) the extend and type of available resources, whether financial or otherwise;

(b) consult such institutions and organization as the Government may, by order, specify.

The Chairman of the District Planning Committee for the North Goa District shall forward the development plan, as recommended by the said Committee, to the Government of Goa.

The expenditure of the meetings of the District Planning Committee for the North Goa District shall be met from the funds provided to the North Goa Zilla Panchayat by the Government towards recurring and non-recurring expenditure for administration.

By order and in the name of the Governor of Goa.

Menino D'Souza, Director and ex officio Joint Secretary (Panchayats).

Panaji, 28th March, 2012.

Notification

No. 26/25/DP/DPC/S/2012

In exercise of the powers conferred by Section 239 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994), and in supersession of the Government Notification No. 26/25/DP/DPC/S/2009 dated 17-08-2009 published in the Official Gazette, Extraordinary No. 3 Series II No. 23 dated 17-08-2009, the Government of Goa is pleased to re-constitute the District Planning Committee for the South District, consisting of the following members and permanent invitees, namely:

Sr. No.	Names of the Members
(1)	Adhyaksha of South Goa Zilla Panchayat ... Ex-officio Chairperson.

(2)	Member of Parliament South Goa (Constituency)	... Member.
(3)	Member of Parliament (Rajya Sabha)	... Member.
(4)	Chairperson of Margao Municipal Council	... Member.
(5)	Smt. Nelly J. Rodrigues, Member of South Goa Zilla Panchayat	... Member.
(6)	Shri Domnic Minguel Gauncar, Member of South Goa Zilla Panchayat	...Member.
(7)	Shri Krishna Puno Velip, Member of South Goa Zilla Panchayat	... Member.
(8)	Shri Aparna Bhoj Naik, Member of South Goa Zilla Panchayat	... Member.
(9)	Smt. Rashmi R. Lambor, Member of South Goa Zilla Panchayat	... Member.
(10)	Shri Anthony Rodrigues, Member of South Goa Zilla Panchayat	... Member.
(11)	Shri Sanjay Krishna Raikar, Councillor of Sanguem Municipal Council	... Member.
(12)	Shri Simoes Mateus Camilo, Councillor of Quepem Municipal Council	... Member.
(13)	Smt. Alifa Fernandes, Councillor of Curchorem-Cacora Municipal Council	... Member.
(14)	Smt. Poonam P. N. Dessai, Councillor of Cuncolim Municipal Council	... Member.
(15)	Shri Arthur Louis D'Silva, Councillor of Margao Municipal Council	... Member.
(16)	Shri Carlos Almeida, Councillor of Mormugao Municipal Council	... Member.
(17)	Shri Ratnakar Y. Dhuri, Councillor of Canacona Municipal Council	... Member.
(18)	All members of the Legislative Assembly of Goa whose constituencies lie within the South Goa District	... Permanent invitees.

The Chief Executive Officer of the South Goa Zilla Panchayat shall be the Secretary of the District Planning Committee for the South Goa District.

Every Panchayat, Zilla Panchayat and Municipal Council falling within the area of South Goa District shall, at the beginning of every Five Year Plan period, prepare a Five Year Plan and by the end of January of every year, prepare an Annual Plan and submit it to the said District Planning Committee for the South Goa District. The said District Planning Committee shall consolidate the plans prepared by the Zilla Panchayat, Panchayats and Municipal Councils in the district and prepare a draft development plan for the district as a whole.

The District Planning Committee for the South Goa District shall, in preparing the draft development plan—

- (a) have regard to,
 - (i) the matters of common interest between the Zilla Panchayat, Panchayats and Municipal Councils in the district including special planning, sharing of water and other physical and natural resources, the integrated development of infrastructures and environmental conservation;
 - (ii) the extend and type of available resources, whether financial or otherwise;
- (b) consult such institutions and organization as the Government may, by order specify.

The Chairman of the District Planning Committee for the South Goa District shall forward the development plan, as recommended by the said Committee, to the Government of Goa.

The expenditure of the meetings of the District Planning Committee for the South Goa District shall be met from the funds provided to the South Goa Zilla Panchayat by the Government towards recurring and non-recurring expenditure for administration.

By order and in the name of the Governor of Goa.

Menino D'Souza, Director and ex officio Joint Secretary (Panchayats).

Panaji, 28th March, 2012.

Department of Personnel

Order

File No. 3/23/93-PER(PF)

In pursuance of the Government of India, Ministry of Environment and Forests, New Delhi Order No. 32012/12/2011-IFS-I(AGMUT)/(10) dated 23-01-2012, the Governor of Goa is pleased to relieve Shri V. Khawlhing, IFS (AGMUT: 94), Conservator of Forests (Wild life & Eco-Tourism), Panaji from this Administration, with effect from 16-03-2012 (a.n.) in order to enable him to take up his new assignment in the Government of Mizoram.

Consequently, Shri Ravi Horo, IFS, Conservator of Forests (Conservation) is transferred and posted as the Conservator of Forests (Wild life & Eco-Tourism).

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Personnel-II).

Porvorim, 14th March, 2012.

Order

File No. 3/23/93-PER(PF)

In pursuance of the Government of India, Ministry of Environment and Forests, New Delhi Order No. 32012/12/2011-IFS-I(AGMUT)/(11) dated 23-01-2012, the Governor of Goa is pleased to appoint Shri Ashok Biswal, IFS (AGMUT: 92), as Conservator of Forests (Conservation), with effect from 16-03-2012 (a.n.).

Shri Ashok Biswal, IFS, reported for duty in this Administration on 27-02-2012 (f.n.) and was awaiting posting.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Personnel-II).

Porvorim, 16th March, 2012.

Order

File No. 7/6/99-PER(PF)

Shri T. M. Balakrishnan, IAS (AGMU:96) is appointed as Secretary to Chief Minister with immediate effect and until further orders.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Personnel-II).

Porvorim, 20th March, 2012.

Order

File No. 7/5/92-PER(Vol-I)

On the recommendation of the Goa Public Service Commission as conveyed vide its letter No. COM/I/5/33(1)/97-2008/Vol-I/38 dated 23-05-2011, Governor of Goa is pleased to appoint Dr. Gopalkrishna Rao, to the post of Principal, Goa College of Pharmacy, Panaji, (Group 'A' Gazetted) in the Pay Scale of ₹ 37,400-67,000 plus Grade Pay ₹ 10,000/- with effect from the date of his joining. His pay shall be fixed as per rules.

Dr. Gopalkrishna Rao shall be on probation for a period of 02 years.

The pay and allowances of the officer shall be debited to the Budget Head controlled by the Directorate of Technical Education, Porvorim.

By order and in the name of the Governor of Goa.

Yetindra M. Maralkar, Joint Secretary (Personnel).
Porvorim, 29th March, 2012.

Corrigendum

File No. 12/3/2011-PER

Read: 1) Order No. 12/3/2011-PER dated 19-03-2012.

In para 1 of the Order dated 19-03-2012 the name of the Department shown against Sr. No. 5 shall be read as "Directorate of Health Services" instead of "Public Health Department" and the expression "By order and in the name of the Governor of Goa" indicated above the signature of Under Secretary (Personnel-II) shall be omitted.

N. P. Singnapurker, Under Secretary (Personnel-II).
Porvorim, 27th March, 2012.

Department of Town & Country Planning**Notification**

No. 4-5-2-84-UDD(Part)/TCP/2012/1035

Read: (1) Notification No. 4-5-2-84-UDD(Part)/TCP/2011/4368 dated 20-10-2011.

(2) No. 4-5-2-84-UDD(Part)/TCP/2011/4504 dated 3-11-2011.

Whereas, vide Notification No. 4-5-2-84-UDD(Part)/TCP/2011/4368 dated 20-10-2011, published in the

Official Gazette (Extraordinary), Series III No. 29 dated 20-10-2011, the Government of Goa declared the areas as specified in the Schedule to the said Notification as Curti-Candepar Planning Area;

And Whereas, vide Notification No. 4-5-2-84-UDD(Part)/TCP/2011/4504 dated 3-11-2011, published in the Official Gazette, Series III No. 32 dated 10-11-2011, the Government of Goa amalgamated Ponda Planning Area with said Curti-Candepar Planning Area and the amalgamated Planning area is called "Ponda Planning Area" whose limits are specified in the said Notification dated 3-11-2011;

And Whereas, the Government of Goa is of opinion that it is necessary in the public interest to withdraw from the operation of the Goa, Daman and Diu, Town and Country Planning Act, 1974 (Act 21 of 1975), the whole of the "Ponda Planning Area," hereinafter referred to as the "said Act".

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 19 of the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975), the Government of Goa hereby withdraw the whole of the Ponda Planning Area, notified vide Notification No. 4-5-2-84-UDD(Part)/TCP/2011/4504 dated 3-11-2011, from the operation of the said Act, with immediate effect.

By order and in the name of the Governor of Goa.

S. T. Puttaraju, Chief Town Planner & ex officio Joint Secretary.

Panaji, 30th March, 2012.

Department of Urban Development

Directorate of Municipal Administration

Order

No. 3/11/81-DMA/Vol.II/2807

Read: Order No. 3/11/81-DMA/Vol.II/2677 dated 27th January, 2010.

The Government of Goa is pleased to constitute a High Power Committee for setting up of Solid Waste Management Project at Sonsoddo on Design, Build, Own, Operate and Transfer (DBOOT) basis to accord administration and financial sanction, to oversee operation and to monitor the execution of the Waste Disposal Project at Sonsoddo, Margao within the framework of Municipal Solid Waste

(Management & Handling) Rules, 2000, consisting of the following members:

- | | |
|---|-----------------------|
| 1. Hon'ble Chief Minister | ... Chairman. |
| 2. Hon'ble Minister (UD) | ... Member. |
| 3. Hon'ble M.L.A., Margao Constituency | ... Member. |
| 4. Hon'ble M.L.A., Fatorda Constituency | ... Member. |
| 5. Hon'ble M.L.A., Curtorim Constituency | ... Member. |
| 6. Chief Secretary | ... Member. |
| 7. Secretary (Finance) | ... Member. |
| 8. Secretary (UD) | ... Member. |
| 9. Secretary (PWD) | ... Member. |
| 10. Secretary (Planning) | ... Member. |
| 11. Secretary (Environment) | ... Member. |
| 12. Principal Chief Engineer, PWD | ... Member. |
| 13. Collector, South Goa | ... Member. |
| 14. Chairperson, Margao Municipal Council | ... Member. |
| 15. Chief Officer, Margao Municipal Council | ... Member Secretary. |

This supersedes Order No. 3/11/81-DMA/Vol.II/2677, dated 27-1-2010.

This is issued with the approval of Chief Secretary and Hon'ble Minister.

Sandip Jacques, Director of Municipal Administration (Urban Development).

Panaji, 15th March, 2012.



Department of Water Resources

Office of the Chief Engineer

Order

No. 3/25-4/87/WR/1458

Read: Govt. Order No. 3/25-5/87/CE-WR/499 dated 29-07-2011 and Addendum No. 3/255/87/CEWR/670 dated 8-9-2011.

Government is pleased to extend the ad hoc promotion of Shri P. J. Kamat, Additional Chief Engineer (Mandovi Basin) in the Water Resources Department promoted vide Govt. order referred above, for further period of six months from 01-02-2012 to 31-07-2012 or till the post is filled on regular basis, whichever is earlier, on the same terms and conditions as stipulated in the aforesaid order.

This is issued with the approval of Government vide No. Pr. Secy. (WR)/88 dated 9-2-2012.

By order and in the name of the Governor of Goa.

S. T. Nadkarni, Chief Engineer and ex officio Addl. Secretary (W.R.).

Panaji, 14th March, 2012.

Order

No. 3/25-4/87/WR/1459

Read: Govt. Order No. 3/25-15/90/WR/560 dated 12-08-2011.

Government is pleased to extend the ad hoc promotion of Shri M. K. Pant, Superintending Engineer in the Water Resources Department promoted vide Govt. order referred above, for further period of six months from 13-02-2012 to 12-08-2012 or till the post is filled on regular basis, whichever is earlier, on the same terms and conditions as stipulated in the aforesaid order.

This is issued with the approval of Government vide No. Pr. Secy. (WR)/89 dated 9-2-2012.

By order and in the name of the Governor of Goa.

S. T. Nadkarni, Chief Engineer and ex officio Addl. Secretary (W.R.).

Panaji, 14th March, 2012.

Order

No. 3/25-15/90/WR/1460

Read: Govt. Order No. 3/25-4/87/WR/795 dated 27-12-2005.

Government is pleased to extend the ad hoc promotion of Shri S. B. Hosamani, Assistant

Engineer/Surveyor of Works (Civil) in the Water Resources Department promoted vide Govt. order referred above, for further period of six months from 01-07-2011 to 31-12-2011 or till the post is filled on regular basis, whichever is earlier, on the same terms and conditions as stipulated in the aforesaid order.

This is issued with the approval of Goa Public Service Commission conveyed vide their letter No. COM/II/11/27(1)/09(Part file)/2036 dated 28-02-2012.

By order and in the name of the Governor of Goa.

S. T. Nadkarni, Chief Engineer and ex officio Addl. Secretary (W.R.).

Panaji, 14th March, 2012.

Order

No. 3/25-15/90/WR/1461

Read: Govt. Order No. 3/25-4/87/WR/744 dated 12-12-2005.

Government is pleased to extend the ad hoc promotion of Shri Anant G. Bhagwat Executive Engineer/Surveyor of Works (Civil) in the Water Resources Department promoted vide Govt. order referred above, for further period of six months from 01-07-2011 to 31-12-2011 or till the post is filled on regular basis, whichever is earlier, on the same terms and conditions as stipulated in the aforesaid order.

This is issued with the approval of Goa Public Service Commission conveyed vide their letter No. COM/II/11/27(1)/09(Part file)/2036 dated 28-02-2012.

By order and in the name of the Governor of Goa.

S. T. Nadkarni, Chief Engineer and ex officio Addl. Secretary (W.R.).

Panaji, 14th March, 2012.

Order

No. 3/25-15/90/WR/1462

Read: Govt. Order No. 3/25-15/90/WR/1023 dated 13-2-2009.

Government is pleased to extend the ad hoc promotion of following Executive Engineers (Civil)

in the Water Resources Department promoted vide Govt. order referred above, for further period of six months from 13-08-2011 to 12-02-2012 or till the posts are filled on regular basis, whichever is earlier, on the same terms and conditions as stipulated in the aforesaid order.

This is issued with the approval of Goa Public Service Commission conveyed vide their letter No. COM/II/11/27(1)/09(Part file)/1956 dated 09-02-2012.

1. Shri Mahalingappa alias Ravindra S. Gokak.
2. Shri Prakash Chandra.

By order and in the name of the Governor of Goa.

S. T. Nadkarni, Chief Engineer and ex officio Addl. Secretary (W.R.).

Panaji, 14th March, 2012.

Department of Women & Child Development
Directorate of Women & Child Development

Order

F. No. 4/3/2000/W&CD/Part/1025

On the recommendation of Goa Public Service Commission as conveyed vide their letter No. COM/II/11/59(1)/2011/354 dated 24-01-2012, Government is pleased to promote following Mukhya Sevikas to the post of Child Development Project Officer (Group 'B' Gazetted) on regular basis in the pay scale of ₹ 9,300-34,800+Grade Pay ₹ 4,200/- with immediate effect in the Directorate of Women & Child Development and post them at the places mentioned at column (3) below:

Sr. No.	Name of designation	Posting on promotion
(1)	(2)	(3)
1.	Smt. Paulina Lourenco, Mukhya Sevika	Child Development Project Officer, ICDS, Pernem, thereby relieving Smt. Bharati Pawaskar, CDPO Bicholim of Additional Charge.
2.	Smt. Vinda V. Naik, Mukhya Sevika	Child Development Project Officer, ICDS, Bardez, thereby relieving Smt. Nanaya Priolkar, CDPO, Satari of Additional Charge.

(1)	(2)	(3)
3.	Smt. Puja S. N. Gaonkar, Mukhya Sevika	Child Development Project Officer, ICDS, Mormugao, thereby relieving Smt. Ruth Almeida, CDPO, Quepem of Additional Charge.

The expenditure in respect of above post shall be debited to the Budget Head of Account "2235—Social Security and Welfare, 102—Child Welfare, 03—Integrated Child Development Scheme

including Health Cover (Plan) (A), 01—Other Salaries.

The above Officers shall be on probation for a period of two years.

By order and in the name of the Governor of Goa.

Sanjiv M. Gadkar, Director & ex officio Addl. Secretary (W&CD).

Panaji, 20th March, 2012.

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